THE RELATION BETWEEN EPISTEMOLOGICAL AND SOCIAL THEORY IN THE THOUGHT OF F.A. von HAYEK

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PhD Thesis

University of Edinburgh

1991

This thesis consists of my original work and all sources I have drawn upon are cited in footnotes and the bibliography.

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ABSTRACT

Existing liberal, libertarian and conservative critical approaches to Hayek suffer from a severe partiality in the way they address his theory. Their insufficiency, however, is bound up with problems intrinsic to Hayek's own thought. The ambiguities in the relation between ontology and epistemology and the alledged independence of method from its subject produce the theoretical basis of a highly subjectivist and conservative social theory. This ambiguous mixture of conservatism and positivism finds its expression in political philosophy in the tension between an idealist advocacy of liberal values and a thorough defence of an unconditional evolutionism. In Hayek's political theory the above mentioned ambiguities are stressed to the extreme. Thus, the tension between the existing and the desirable, which derives from an inherently contradictory epistemology, produces a situation of constant vicious circularity; the existing and the desirable, in the form of evolutionist justificationism and idealist liberal normativism respectively, appear as at the same time one another's preconditions and results. Hayek's failure to achieve self-consistency in his political theory is demonstrated through a discussion of his ambivalent attitude to democracy, authoritarianism, social justice and the welfare state. It is concluded that despite the contradictions inherent in its premises and structure, Hayek's theory achieves its wide influence owing to its *de facto* endorsement of the pattern of capitalist social relations which exists today.

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INTRODUCTION

Hayek's work is of multiple importance in the history of the 20th century Western thought. First, it is important because it spreads over a vast area of (overlapping or even distinct) topics. Hayek has covered a variety of topics such as economics (both theoretical and applied), theoretical psychology, politics, history of ideas, philosophy, epistemology and law, to mention but his major contributions. Secondly, his work, understandably large if one considers the variety of topics, spreads over a period of more than half the 20th century. Apart from its length, his work is also characterized by a considerable degree of coherence at least as far as its aims are concerned. In all major disciplines that he has been involved, Hayek has tried to develop an argument for his ideal - the "free market society". In that sense, his work is ideological in that it is thoroughly determined by a fixed political principle[1]. This point brings forward the third reason of Hayek's prominent importance. He has struggled throughout his life to supply contemporary capitalism with a sound ideology. In J. Gray's words, "(...) Hayek seeks to raise up a system of ideas, a structure of principles with the aid of which we can understand social and political life (...)" (J. Gray 1986a p.1)[2]. This may sound a paradoxical or even trivial observation. Paradoxical, because capitalism, as an all dominant mode of production, was ideologically dominant even before Hayek's views gained any influence; and trivial because capitalism has had more than a few defenders throughout its history. This critique, however, might be a little hasty. The fact that capitalism as the dominant mode of production is ideologically dominant as well does not imply that its dominance is absolute or free from antitheses. Its dominance rests, rather, on certain general principles and ideals (such as the sanctification of property, for example) which might be expressed in different ways or even take different forms according to the historically given socio-economic circumstances. To suggest that capitalism's ideological dominance is unalterable in form implies a mechanistic simplicity. The difficulty in determining the category of dominant ideology lies precisely in the fact

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[1] See also J. Gray 1982 p.19.

[2] It is not altogether clear why Gray uses this statement as a proof of Hayek's relation with classical liberalism. The mere fact that Hayek produces an ideological construction does not seem to point towards a classical liberal heritage anymore than towards a conservative or a socialist one. On that, see also discussion that follows in the second part.

that its form depends on a multiplicity of different and interrelating factors in each historical moment such as the general needs of capital, the relative position of the distinct (and sometimes opposed) groups within the capitalist class as well as the level of class struggle in society. It is, therefore, quite plausible to have more than one ideological construction, which might even appear opposed to each other, but which in their essence are "equally" bourgeois, according to the particular interests and the historical moments that they express.

In that sense, although it is plain that the ideological dominance of capitalism does not rest on individual "constructions" in the sector of ideology, the role that individual philosophers play in the crystallizing of the form of the dominant ideology is important. Hayek's attempt was to construct a comprehensive ideology, or at least to set the foundation stone for one[1]. It is, therefore, an attempt to answer all those quasi-"scientific" concepts of managerial revolutions, affluent societies and end of ideologies which dominated the English-speaking world after W.W. II. It is these concepts that Hayek has in mind when he talks of an almost voluntary retreat of the liberal thought from the ideological battlefield and it is those intellectuals (more than any Marxist) that he condemns.

A different approach, is advocated by Yvon Quiniou. Quiniou argues that "Hayek's thought constitutes a real challenge for contemporary Marxism. It does so in that it is wholly organized against socialism, despite its rare allusions to Marx." (Y. Quiniou 1989 p.76, my translation). There might however be less of a difference between the two approaches than it seems in the first place. It is a doubtless fact that Hayek opposes his theory to the "socialist" road that the western societies have taken. But it is still a matter of debate if one will agree, as Quiniou seems to do, on whether this road is in fact socialist or not. Hayek, then, rejects certain choices that the western societies made that *he* labels as socialism but which are only different versions of the bourgeois ideology[2]. If this point is relatively clear, then Quiniou's

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[1] J. Gray talks about "a coherent research program" (J. Gray 1982 p.20). That is, coherent as far as its political aims are concerned.

[2] C. Kukathas raises the same point. His answer is that Hayek mainly opposes the Saint Simonian version of socialism rather than Marxism (C. Kukathas 1989 pp.6-7). This answer however seems misleading. Hayek does not reject any version of "socialism" just for the sake of philosophical (continued...)

argument does not seem to be different than the one proposed here. "Hayek sees a mortal danger (...) in the increased role of the state and in social-democratic experiences (...)" (Y. Quiniou 1989 p.76, my translation). "[Hayek's theory] presents also a challenge, because of its increasing influence not only in the Right, but also in an unstable socialist Left (...)" (Y. Quiniou 1989 p.76, my translation). It is only through the doubtful equation of state intervention and Keynesian policies with Marxism and socialism that Quiniou can draw his conclusion. Hayek's theory then is an attempt to surpass the present form of the dominant ideology and, at the same time, to provide a "different" framework of moral political and social values. That is why he constantly condemns what he calls socialist contamination of the liberal thought.

Finally, Hayek's theory is of great importance for one more apparent reason. His opposition to any notion of "consensus" policy has resulted in him acquiring the position of "conservative" or even "reactionary" and certainly "extremist" and "cynical"[2] as far as the moral outcomes of his theory are concerned, even in his own camp (that is in the wider space of pro-capitalist academics). Milton Friedman makes the point quite clearly: in talking about himself and those who shared the same ideals, he says "[We] were a small beleaguered minority regarded as eccentrics by the great majority of our fellow intellectuals." (Milton Friedman 1982 pp.VI-VII). A. Arblaster puts it rather more sharply when he states that Hayek "(...) had been treated as something of a freak, an anachronistic survivor from an earlier lost age." (A. Arblaster 1984 p.340). It might sound a little exaggerated (or even irritating) that Hayek used to complain about a deliberate "marginalization" but the fact is that the main attitude towards him (and his colleagues in the Mont Pelerin Society) was indifference (certainly by the whole of the political world) if not covert hostility. Things changed, however, and by the mid-seventies Hayek had already become a

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[2](...continued)
discussion. His opposition is explicitly political. In that sense it is of little use to try to trace down the philosophical roots of what he rejects (also in view of the fact that they are both obscure and bitterly disputed). It would be much more helpful to try to focus on the explicit political forms that Hayek attacks and pass by any "labelling" attempts. N. O' Sullivan (1989 p.7) also comments that the New Right rejects the *liberal* consensus of the 1960s.

worldwide figure[1]. Already a Nobel Prize winner, he has established himself as one of the most influential figures in the history of 20th century liberalism.

There is an endless debate as to whether Hayek actually anticipated the changes that capitalism underwent during the post-W.W. II period or not. This debate is all the more perplexed by the fact that the very usage of the word "anticipation" seems quite problematic in a theory that relies so heavily on anti-historicism and the unpredictability of social outcomes. The fact, however, remains that, starting from the early seventies, Hayek's theory acquired a central position in the world of politics and consequently in academia as well[2]. It was the actual change in socio-economic and hence political conditions of contemporary capitalism, then, that brought forward and established the relevance of Hayekian theory[3].

In the first part of this thesis an attempt will be made to take into consideration some parts of the existing works on the subject. The part comprises of two distinct but interrelated sections. The first presents some critiques that concentrate on the problem of mind in Hayek's theory. These critiques comment on the fundamental problem of epistemology in Hayek's theory and its relation to ontological premises, as well as to methodology in political philosophy. Closely related to the answers that each scholar gives to these questions, is the overall characterization of the theory as, for example, Kantian or non-Kantian, liberal or antiliberal. Thus, at the beginning of the first section of the first part a controversy on whether Hayek is a Kantian or not is used in order to highlight some methodological problems of such attempts.

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[1] See also, J.Gray 1982 p.19.

[2] It should be stressed that it is this process that gives the Hayekian theory a distinct place. The importance of Hayek's work, unlike, for example, Rawls' was first recognized in actual politics and then in the academic circles.

[3] As to this point, there seems to be a widespread agreement even between rival approaches. M. Friedman, for example, in explaining why his work (and consequently the work of all others writing in the same vein) remained under the shadow for so long, concludes that "[t]he change in the climate of opinion was produced by experience, not by theory or philosophy." (M. Friedman in A.J. Anderson 1986 p.129). A. Arblaster in his clearly hostile critique of the New Right makes the same point. "We can only explain the attention presently given to the ideas of Hayek, Friedman and the market theorists in terms of the particular circumstances of the 1970s and the 1980s, since it was certainly not the novelty of what they had to say that attracted attention." (A. Arblaster 1984 p.340). The political conditions that brought to the for those ideas are also stressed by S. Clarke (1987 p.424), and R. Plant (1989 p.4).

The second section focuses on some aspects of Hayek's social theory as viewed through a certain (hopefully wide enough) range of critiques. For the most part, these approaches try to investigate the extent to which these basic aspects of social theory derive consistently from Hayek's epistemological and methodological premises. Thus, in that section some accounts are given of the central notions of spontaneous order and the rule of law, as well as of the issues of liberty, coercion and the role of the state. Hayek's methodology is also touched upon, in view of its function in social theory.

A labeling of the views presented in that context may perhaps be proved more obscuring than helpful. Notwithstanding that danger and keeping in mind that some characterization may, after all, be unavoidable, it can be argued that, in a broad sense, the views taken into account tend to represent conservative, libertarian, liberal and Marxist critical approaches. At no point of this work is it claimed that the presentation of the literature on Hayek (or any other part, for that matter) is non-evaluative. On the contrary, the second task that that part tries to achieve is to locate the weaknesses and shortcomings of the critiques presented and to try to draw some conclusions that will help establish the argument advanced in the remaining two parts.

The two remaining parts basically constitute the critical presentation and development of the points touched upon in the first part. The first section of the second part further seeks to present and criticize the ontological and epistemological premises of Hayek's theory as well as the overall relations between the categories of ontology and epistemology. At the same time, that section attempts to establish the links between Hayek's theory and some philosophers of the 18th and 19th centuries, notably Hume, Berkeley, Kant and Mach. It is hopped that this comparison, although less than systematic, will facilitate the understanding of Hayek's ideological heritage. Furthermore, in most cases, it might help to penetrate beneath a modern phraseology and discover the ideas that underpin a contemporary "radical" social theory. The brief reference to the problem of methodology in Hayek's theory highlights the above effort. Finally, the section closes with an attempt to account for the central questions of causality and necessity in Hayek's philosophy.

The second section of the second part examines the application of Hayek's epistemology on the central concepts of his social philosophy. Thus, that section is

a more systematic exposition and critique of the capital but complex notion of freedom under the rule of law and its theoretical framework. Firstly, it is the concept of order as such but more importantly in its social dimension that is criticized. The concept of law as the corpus of abstract rules that incorporates the principles of an order occupies the second section. Law is again discussed primarily in its social dimension. Finally, the most important part of the section is devoted to the concept of liberty as presented in Hayek's theory, that is, as freedom under the rule of law. In that section the status of liberty in Hayek's structure of values is discussed along with the general attributes of the law of freedom. The section closes with an examination of the role of the test of universalizability both as a demand for formal conformity and as a claim for compatibility of a rule with the rest of the existing rules.

The last part attempts an examination of Hayek's political theory in the light of the discussion developed in the two previous parts. The sections of that part focus on the major aspects of Hayek's thought but methodologically they all revolve around the axis of the state. Thus, Hayek's views on the general rules and commands are reintroduced along with a discussion of their use as devices of political obligation. A brief discussion of the superficially terminological issue of the use of "government" instead of "state" introduces the two major sections of the third part. In the first, Hayek's idea of democracy is presented and criticized while at the same time an attempt is made to place it in a more general trend of thought. The second major section deals with the attack that Hayek launches against the welfare state. Issues like social equality and justice are discussed along with an attempt to comment on the moral considerations that arise out of them. The capital problem of political theory, that is, the problem of the nature and function of the state constitutes the basis of the above discussion. Hayek's suggestions for the functioning of the "government" stress this discussion further in a more "positive" direction. Finally, the "Model Constitution", the Hayekian utopia, provides the chance for a better understanding of the social and political implications of his theory.

It will be the main argument of this thesis - both in methodological and in analytical terms - that the only way to interpret Hayek's theory adequately is as a basically *political* theory - that is, as a defence of the needs of contemporary

capitalism. It is only through that perspective that its inconsistencies can be explained - that is, as inconsistencies based on and partly reflecting the actual contradictions of the historical development of capitalism. Much in the sense of S. Clarke's analysis of monetarism (S. Clarke 1987), then, but in a wider field of issues, it is maintained that Hayek's theory is actually a response to the political and ideological crisis of the capitalist state and its ideology. It is through this political dimension that Hayek's theory acquires the consistency and continuity that method alone or its epistemology are unable to provide. It is also through its primarily political essence that it acquires its significance both for those who defend the existing socio-economic formation and for those who oppose it.

Some terminological ambiguities might arise in the attempt to evaluate Hayek's theory as a theoretical apology for capitalism. His thought is frequently characterized as conservative throughout this work. Conservatism, however, in its more conventional meaning in the English-speaking world, that is, as the political ideology that arose as a reaction against the French revolution as well as its identification with certain personalities such as Burke (R. Nisbet 1986), results in too narrow a concept in comparison to the one employed here. Besides even the advocates of a more strict use of the term agree that there is no ideological purity in it and that the common points with liberalism are many and of fundamental importance (R. Nisbet 1986 pp.37-40). It is precisely these common points - which constitute the actual basis on which both variations are developed - that are used as criteria in the definition of conservatism here. Hence, instead of appealing to an abstract "turn to the past for inspiration and for models on which to base policy in the present" (R. Nisbet 1986 p.18) where the "past" is doomed to remain both obscure and empty of any concrete content, what is proposed is to concentrate on the essence of the concept. Thus, conservatism in the narrow sense, by its commitment to authority and property as its two central concepts (Nisbet 1986 p.34) is hardly distinguishable from contemporary liberalism. Even liberty, the alleged supreme value of liberalism, is happily accommodated in that scheme[1]. This argument, of course, does not imply that there are no differences between a narrow concept of conservatism and that of, say,

[1] As R. Nisbet 1986 pp.34-35, shows.

liberalism, as there are among different individual exponents of liberalism itself. Rather what it attempts to point out is that in contemporary social conditions the similarities between the two are fundamentally more important than their differences. Thus, conservative is used here in order to imply a conscious attitude towards the maintenance of the basic pillars of capitalism - notably, the private property of the means of production and consequently the division of society into conflicting social classes and the existence of a coercive state. In that sense conservatism acquires a considerably wider meaning. It embraces, apart from the ideas traditionally described as "conservative", all libertarian and the vast majority of liberal ideas as well. In that sense, conservative is no longer opposed to liberal or socialist, but to anti-capitalist[1].

It is, then, political conservatism, not in the sense of inscribing to a particular political party or even a particular tradition of political theory (at least not always) but in the sense of trying to preserve the actual basis of capitalist society, that characterizes Hayek's thought. And it is political reaction, in the sense of radically and violently fighting against any action or institution that may put in danger that particular social organization, of what his theory is guilty.

[1] At times, however, conservatism is also used in its conventional sense, as for example, is the case in the fifth section of the first part where it is distinguished from liberalism and libertarianism. It is hoped that this double usage of the term will not generate any ambiguities since in most of the cases where the term is used in the latter "conventional" sense, it is either related to certain personalities (notably to M. Oakeshott) or clearly contrasted to other expressions of political theory such as liberalism and libertarianism.

PART I: EXISTING LITERATURE ON ASPECTS OF HAYEK'S THEORY

The number of scholars who have occupied themselves in criticizing Hayek is far from moderate. There is hardly any article or book written in the 1980s concerning contemporary social theory, theories of market economy, philosophy of law or theories of the state that has not got some direct or indirect reference to Hayek or his theory. What follows can scarcely constitute a complete survey of this vast literature: neither could it be argued that it is a systematic approach to its most important parts. Rather, what is been attempted is an outline of the critiques of certain scholars on particular sectors of the Hayekian thought. These sectors will constitute, *mutatis mutandis*, the main points examined in the subsequent parts. It is obvious that such a survey is always in danger of becoming eclectic, over-simplifying and formalist.

SECTION A: Philosophical Issues

1. Hayek's Kantianism as a Key to his Liberalism: Gray *versus* Forsyth.

Hayek's intellectual heritage has been the topic of a long and controversial debate. It will be argued, however, that that debate, for the most part, has been characterized by a considerable degree of seemingly inexplicable partiality. A critical approach that aims to characterize Hayek as "Kantian" or "empiricist", "liberal" or "conservative" is bound to leave a substantial part of his theory unaccounted for. A comparison of J. Gray's account of Hayek as a Kantian hence a liberal, and M. Forsyth's view of Hayek as an anti-Kantian hence anti-liberal is intended to help illustrate the above point.

Gray places Hayek in the Kantian tradition; at the same time he assumes that Hayek is the legitimate heir of classical liberalism[1]. Gray believes that in its fundamental aspects Hayek's thought is Kantian "in its denial of our capacity to know things as they are or the world as it is" (J. Gray 1986a p.4). It is also Kantian in its

[1] J. Gray 1982 pp.19-66 and J. Gray 1986a esp. pp.1-26.

refusal to accept any "pure core" of experience. Rather "the order we find in our experiences, including even our sensory experiences, is the product of the creative activity of our minds rather than a reality given to us by the world" (J. Gray 1986a pp.4-5)[1]. From this follows the Kantian, according to Gray, assumption of the impossibility of speculative metaphysics; the task of philosophy is to investigate the limits of reason.

Hayek's Kantianism, then, is ultimately based on epistemology. However, it is clear that Gray suggests an ontological liaison as well since he takes the organizing mind as the primary category. Having said that, Gray examines another, secondary, intellectual influence of Hayek - that is, E. Mach. Hayek's link to Mach consists mainly of a certain ultimate monism in ontology. Gray bases his argument on Hayek's *The Sensory Order*, where mind is presented as the order prevailing in a part of the physical universe - that part which is ourselves. The implication is, according to Hayek, that mind must always remain (to us) a realm of its own. Apart from the ontological aspect Hayek is linked to Mach in yet another way; that of the denial (as phantom problems) of traditional "metaphysical" problems such as the freedom of the will. It must be stressed, however,that Hayek's relation to Mach and positivism, no matter how important, is only secondary for Gray.

Gray's attempt,then, is to place Hayek primarily in the Kantian heritage. But are the arguments that he presents sufficient? Keeping in mind that this is not an essay on Kant, an attempt can be made to examine the implications of the above mentioned linkage in terms of analytic utility. That is, the question that will be asked is: does it help to solve the problems that emerge from Hayek's philosophical account? In the first place, it should be mentioned that Gray's argument is based on a partial reading of Hayek's work. To state that Hayek belongs to the Kantian heritage because of his denial that the mind can know the world as it is, is certainly a necessary but not a sufficient condition. The line drawn by Kant is certainly characterized by an *a priori* inability of the mind to know the world as it is. But, without implying that this is Hayek's case, this concept is also present in other

[1] At the same time however, he also argues that for Hayek "the picture we form of the world emerges straight from *our interaction with* the world (...)" (J. Gray 1986a pp.6-7, emphasis added). Is the "world" creative of experience, then, or not?

philosophical trends[1]. Taken as the only condition, then, it can lead to no certain conclusion. A reference to common ontological premises, thus, becomes necessary. But it is precisely in ontology that Gray shifts Hayek away from Kant and into Machian positivism. For Kant the existence of the thing-in-itself was a working condition. Kant, of course, considered the thing-in-itself as unknowable. He, therefore, reserved a place of fundamental importance for faith (or intuition). In that sense, the thing-in-itself could gain its place in his theory not as an object of empirical knowledge but as a result of the power of the human mind. Human mind was for Kant and all powerful category and its power rested on the existence of the thing-in-itself.

Where does Hayek stand in respect to all these concepts? Obviously, he makes no reference to a thing-in-itself. In fact, his empiricist thought pushes him to deprive it of any meaning whatsoever. The question "what is x" as such is meaningless for him. In the first place, then, Hayek breaks with Kant's ontology by denying the objective (in the idealist sense) existence of the thing-in-itself. He also breaks with Kant, as Gray himself recognizes (J. Gray 1986a p.250n.) by totally relativizing the distinction between appearance and reality. This is a somehow consistent result of his positivist ontology. Since the impediment of the thing-in-itself has been removed, there can be no legitimate reference to reality. Gray, however, suggests that this extremist position is only held by Hayek "at times" while on other occasions Hayek adopts a more Popperian "commitment to conjectural realism" (J. Gray 1986a p.250n.). This is indeed a strange way of defending Hayek's theory. It seems to point towards the contradiction rather than towards a way out of it. As Y. Quiniou points out, "(...) Kant's critical rationalism stressed the *metaphysical* limits of reason, not its limits on the *plane of experience*" (Y. Quiniou 1989 p.86, my translation). In that sense, J.W.N. Watkins' comment on Popper seems relevant in Hayek's case as well. Watkins argues that Kant saw clearly that the empiricist account of sense experience cannot solve the problem of the creation of a coherent experience in human mind. "Kant's solution consisted, essentially, in leaving the old quasi-mechanistic account of sense-organs

[1] For example, in all theories that reserve a place for some notion of "beyond", be it secular or metaphysical-theological.

intact, and endowing the mind with a powerful set of organizing categories - free, universal and necessary - which unify and structure what would otherwise be a mad jumble" (J.W.N. Watkins in P.A. Schilpp 1974 pp.401-402)[1]. Watkins' criticism is precisely that Popper's (and for that matter Hayek's) evolutionist positivism tends to modify the Kantian view at both ends. Mind's powerful and necessary organizing categories lose both their fixity and necessity. Hence, the limited role of reason that Hayek implies in epistemology. At the same time, sense experience loses its mechanistic and causal character[2].

In what sense, then, can it still be argued that Hayek's view is Kantian? Gray suggests that the Kantian element is saved because of the ultimate appeal to the organizing power of the mind. According to Hayek, he says, the order we find in the world may be the result of the method by which we perceive it - i.e. it may be the product of the creative activity of our minds. But Gray seems to overlook two important points in his argument. Firstly, he seems to be unaware of any contradictions or even tensions that this assumption might generate in the Hayekian system. It is, therefore, less than clear, as critics were quick to point out, that there is a legitimate link between "the order that is called mind" which has been wholly determined by pre-sensory experiences and the "uncompromising" assumption mentioned above. Although Hayek is at pains to prove that pre-sensory experience owes nothing to any sort of direct communication of the mind with the fixed properties of the physical objects, it still remains unclear to what extent this pre-sensory experience is determined by a given objectivity. Indeed, Hayek's lapse into agnosticism[3] only seems to confuse things: pre-sensory experience is totally unconscious. From the moment we gain consciousness of it, it ceases to be pre-sensory and becomes sensory which is a totally different thing. Pre-sensory experience, therefore, seems to owe nothing to the *a priori* organizing ability of the mind. But it also seems to owe nothing to any kind of direct communication of the

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[1] See also J. Gray 1982 p.27.

[2] For a critique of Hayek's interpretation of causality, see part II.

[3] The term connotes the *a priori* distinction between the realm of the "knowable" and that of the "unknowable" by conscious rational activity.

mind with the objective properties of the physical world, since this would be equal to attributing a "pure core" to sensations - and, what is worse, this "pure core" would have been an objective, materialist category. Gray is familiar with Hayek's efforts to "purify" empiricism from materialism. Nevertheless, he is still inclined to take this agnosticist approach at face value. He does not seem prepared even to question its consistency or coherence.

Secondly, even if we are to go along with Gray in ignoring all inner problems created by Hayek's evolutionism, we still cannot assume a Kantian heritage unless it is demonstrated that Hayek's views are functionally compatible with Kant's. We have already mentioned Hayek's refusal to acknowledge the existence of a thing-in-itself. We have also mentioned his denial of the necessary (in the Kantian sense) and fixed mental categories and the causal character of experience, along with his refusal of the "pure core" of experience. What is finally left from the supposed initial identity between Kant's and Hayek's approach is a rough parallelism. They both believe that the world is not knowable. But whereas for Kant the thing-in-itself is a component part of the existence, for Hayek it is not. Consequently, the fideist solution that Kant offers in the end cannot be acceptable in the Hayekian system. Hayek is, for that matter, closer to Hume[1] than to Kant. In ontology for Kant there is no question as to the determinant validity of the *a priori* mental categories and thus, finally, as to the priority of mind over matter. For Hayek the question is dismissed as a fantom-problem (at least verbally). For Kant mind is all-powerful in a twofold sense. It is solely responsible for the organization of experience into coherent thought; and it serves, in the last analysis, to reach the final answers concerning the world. For Hayek, on the contrary, mind is an extremely limited category. Not only is it condemned to give subjective (even arbitrary), partial and ineffective accounts of the "world" but its main inability is essentially to explain itself. It would seem then that according to that view mind can virtually explain nothing since the world "as it is" depends on the way mind organizes it. But mind cannot explain the way it organizes the world, hence, it cannot explain the world either. Any notion of universal and necessary (mental) organizing categories has been ruthlessly eliminated from Hayek's

[1] His views are also close to G. Berkeley's. On that see relevant discussion in part II.

theory. Thus, he "purifies" Kantianism from the concepts of objectivity and necessity as he has "purified" empiricism from materialism.

This also seems to be Forsyth's objection to the Hayekian view (M.Forsyth 1988 pp.235-250). Forsyth disagrees with Gray (and to a lesser extent with N.Barry (1979)) in placing Hayek to the Kantian and even to the liberal tradition. "The idea of a man as a self-determining being, and the idea of necessary, rational laws governing the relationship of men as free beings, may be said to express the core of liberalism" (M. Forsyth 1988 p.237), Forsyth argues. Forsyth derives this conclusion from as prominent a liberal as Guido de Ruggiero. "Only one who is conscious of himself as free is capable of recognizing the freedom of others" (G. de Ruggiero 1927 p.13) and "To act and to act freely are the same; without freedom there is no action but passion, mechanism, habit"(G. de Ruggiero 1927 p.352). Hayek on the contrary, takes man to be essentially incapable of self-determination and the use of his reasoning faculties (at least as far as ordinary social life is concerned). Forsyth's criticism is made from an apparently liberal-idealist standpoint. In that sense, it will be used only in so far as it serves to point out that Hayek is not a Kantian and perhaps not a liberal either. His objections can be summarized in three major propositions.

a] Hayek's idealism is inconsistent. The priority of mind is rendered problematic.

b] There is no distinction in Hayek's "scientific evolutionism" between human and animal mind. If we are to take mind simply as a classificatory organism, then all living beings are in possession of it. The evolutionary-adaptory process, genetical-biological in its essence, which is taken to constitute the whole living process and the total function of mind, is a mechanical process.

c] In the Hayekian theory there is no place for self-consciousness in the sense of the distinguishing feature between the human and the non-human. Consciousness (in the sense of self-consciousness primarily) is not defined adequately. Hayek's idealism is incoherent.

Forsyth points out that Hayek's theory is anti-Kantian at least in that aspect. By implying a mechanistic-evolutionary process of existence common to man and animal Hayek fails to guarantee this distinct place for man as a value *per se* for which Kant has explicitly argued. Again, in the problem of the priority-independence

of mind, Forsyth criticizes Hayek as being an anti-Kantian (and in that he comes in a sharp conflict with Gray). He actually places Hayek's ontology in the Machian tradition which he takes as a monist tradition. The universe, he says consists for Hayek (as for Mach) of a continuum of physical events. "The reason why we have to distinguish in *practice* between "mental" phenomena and "physical" phenomena is that we are unable to comprehend the precise connection between specific physical and specific mental events. The "autonomy" of the mind is thus saved but only as an *ersatz*; it is merely an appearance that we have to accept because we cannot take the last step of positively demonstrating it to be false." (1988 p.240). Forsyth's critique, thus, focuses on the fact that Hayek's ontology weakens the sovereignty of mind and leads eventually to a kind of ultimate materialism. If we are to take mind as a merely conventional autonomous category, then the mind-matter problem runs the danger of being solved on a materialist basis. The question of the knowability of the world through a direct or indirect interaction with it, thus, becomes only a secondary matter. Of course Forsyth's criticism should be taken as what it really is - that is, an attempt at consistent idealist criticism of Hayek's philosophy. Forsyth could have been less concerned with this "materialist" ontological position if he had followed Hayek's thought to the end. In fact, Hayek makes a considerable effort to ensure that the possibility of a materialist interpretation of his ontology will always remain a verbal statement deprived of any actual meaning. To us, he says, mind was, is, and will always remain the determinative category[1]. Therefore, Forsyth's criticism, although perfectly justifiable in terms of "pure" philosophy, is only of secondary importance in terms of the practical political results produced by the Hayekian theory. There, Hayek emerges as a consistent idealist and takes pride in pointing out that his theory is actually the only theory free from any hylomorphic concepts.

Is Gray's thought, then, totally arbitrary and out of place? Has Hayek's theory nothing to do with Kant? And why is Gray concerned to relate Hayek's theory to the Kantian heritage? Hayek's thought, it will be argued, is related to Kantianism (though mainly through its Neo-Kantian version), as is to the thought of D. Hume. Indeed, one of the most striking omissions of Gray's (and N.Barry's) book on Hayek is an

[1] See discussion in part II.

almost total lack of references to the Humean tradition in his latest writings. Hume is mentioned just seven times throughout the book and only on two occasions has the reference any clear significance for the Hayekian theory (J. Gray 1986a pp.7,130)[1]. It seems, however, that the two theories have much in common and that an explicit and direct link between them is of capital importance. In Lenin's words the essence of Hume's theory as that of Kant's "is that they both in principle fence off the "appearance" from that which appears, the perception from that which is perceived, the thing-for-us from the "thing-in-itself". Furthermore, Hume does not want to hear of the "thing-in-itself", he regards the very thought of it as philosophically inadmissible, as "metaphysics" (as the Humeans and Kantians call it); whereas Kant grants the existence of the "thing-in-itself", but declares it to be "unknowable", fundamentally different from the appearance, belonging to a fundamentally different realm, the realm of the "beyond" (*Jenseits*), inaccessible to knowledge, but revealed to faith." (V.I. Lenin 1962 vol.14 p.102).

In order to trace the reasons for Gray's insistence on linking Hayek to Kantianism, it might be useful to take a closer look to Forsyth's denial of it. In fact, Forsyth seems to deny the connection exactly for the same reason that Gray implies it. Both scholars start from an intimate disposition to defend liberalism - and hence, as has been argued even by conservative theorists, the political theory of capitalism[2]. Gray believes that Hayek's thought is a legitimate and functional theoretical abstraction from the actual problems of capitalism and, in that sense, that it produces (or, at least, points towards) a way of explaining and overcoming them. Forsyth, on the contrary, thinks that this is not the case at all and that the Hayekian theory does not produce any viable solutions for liberal society. Gray, consequently, is trying to endorse Hayek in the liberal mainstream[3]; by implication he uses Kant - the ancestor

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[1] In an earlier work Gray does have a separate paragraph on the influence of Hume (see J. Gray 1982). But apart from being limited in length this paragraph is also limited in content. The reference is exhausted to the influence of Hume in Hayek's social philosophy and only in respect to the question of morality. Although his *Hayek on Liberty* is essentially an expansion of that work, this paragraph, far from being developed, is in fact integrated in the general presentation.

[2] The relation of liberalism and particularly neo-liberalism with capitalism is also stressed by defenders of liberalism and conservatism. For example, N. O' Sullivan 1989 p.6.

[3] Gray considers Hayek's thought as "The Rebirth of Classical Liberalism" (J. Gray 1982 title).

par excellence of liberalism - as the ancestor of Hayek. His effort is to discover any possible links or similarities between Hayek and Kant and to try to diminish (often by omitting them) any differences. Kant is the catalyst through which Hayek becomes acceptable in the liberal tradition. Forsyth follows the same path but in the opposite direction. Starting from the rejection of the political applications of the Hayekian theory as non-liberal, he emphasizes all possible differences between Kant (again taken as an ancestor *par excellence* of liberalism) and Hayek in order to prove that Hayek's theory is alien to the liberal tradition. The important thing, therefore, in the examination of the above critiques is that one can never understand why they stress certain points of Hayek's theory while at the same time they tend to minimize certain others if one tries to proceed solely in terms of "pure" philosophy. This inexplicable partiality, however, seems to be resolved if one treats the respective political positions of the two scholars as the determinative factors of their critiques. It is only after the "libertarian" views of Gray and the "liberal" views of Forsyth have been taken into account that an understanding of their respective readings of Hayek (and for that matter of Kant as well) can be reached. This argument also points out probably the most important feature of Hayek's theory, that is, its loose inner structure and at times, its inner inconsistencies that provide the necessary ground for such interpretations to arise.

2. The Problem of Mind: Gray's Critique

The question of Hayek's conception of mind is of fundamental importance because mind seems to be the concept that bridges the gap between his "value free" epistemology and his "ultimate" monism in ontology. In doing so, mind also constitutes the main category that Hayek uses in order to pass from philosophy to social theory. Hayek's approach to the "mind problem" will be treated systematically later on. Here some main critiques of his theory will be considered.

J. Gray stresses the importance of the Hayekian concept of mind, both as an important philosophical problem and as the key that links Hayek's ontology (or, rather the apparent lack of it) with his social philosophy. Hayek's case for the market

process and for social order, Gray says, is one which appeals primarily to the considerations of the concept of mind (J. Gray 1980a p.121). "Hayek himself is emphatic that these insights in the theories of mind and knowledge have the largest consequences for social theory." (J. Gray 1982 p.31). In the account that Gray gives of the Hayekian theory one could distinguish two periods or phases. At first, he seems to be quite reluctant to accept Hayek's theory uncritically[1]. Then, his general outlook changes radically[2] and he ends up actually supporting Hayek vividly[3]. Hard as it may be to do so, we shall try to follow Gray through all his intellectual journey.

It has already been mentioned that Gray places Hayek's general theory in the Kantian tradition, and the treatment of the mind problem is no exception. Mind is for Hayek, as for Kant, Gray argues, the only organizer of the order we find in the world; knowledge, thus, cannot be constructed from a basis of raw sensory data; rather, it is a product of the creative activity of mind. By implication, the world as it appears becomes also the product of mind. Gray also quotes Hayek's own statement on the relation of his theory with the Kantian conception of categories that govern our mind (F.A. Hayek 1978 p.45n. and J. Gray 1982 p.31 and 1986a p.21). However, Hayek is distinguished from Kant in that he considers these categories as alterable and evolutionary rather than universal and invariant. And, above all, he thinks that mind, exactly like society, is, after all, governed by laws, the content of which cannot be known to us. The distinction that Gray makes - that not all laws are unknowable - seems, here, of secondary importance. The essence is "that there must of necessity be an unsurpassable limit beyond which we are unable to specify the rules by which our lives are governed" (J. Gray 1986a p.22). The fact, according to Hayek, that the mind is unable to grasp the most basic rules which govern its operation reflexively, follows from its nature as a classificatory organ and the theorem that no system of classes can contain itself. From these two basic premisses - that is, that "the life of mind" is governed by rules and that these rules are not knowable - Hayek deduces that

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[1] See, J. Gray 1980a and 1981.

[2] See, J. Gray 1982.

[3] See, J. Gray 1986a. To this one may add a third period where Gray becomes "noticeably less enthusiastic about Hayek's liberalism" (M. Forsyth 1988 p.235).

conscious thinking must be governed by rules which are not conscious, that is, by a "supraconscious mechanism" or "metaconscious mechanism" (J. Gray 1986a pp.22-23). The totality of the rules are hierarchically structured, with the most fundamental among them at any time being metaconscious, that is, unknowable. At the same time, these rules are not conceived of as invariant principles with a fixed content. Rather they are products of a process of evolutionary selection and modification. This, in general terms, is how Hayek's theory of mind is presented in Gray's latest writings.

In his earlier writings, however, Gray's account is substantially different. The link between Kant and Hayek is already present but the problem of mind is considered primarily as a debate within a different tradition. "One of the basic postulates of the Hayekian system is contained in his endorsement of the Austrian thesis of the autonomy of the human mind" (J. Gray 1980a p.120). The main features of the system are said to be subjectivism and skepticism. In that respect, Gray's early critique is closer to the approach proposed in this thesis. Indeed, in Gray's account of it, Hayek's theory approximates a form of subjective idealism and agnosticism. The main accent is placed on Hayek's claim that human - i.e. individual - knowledge is undetermined and unpredictable. The unpredictability of knowledge, however, which is defined simply in reference to individual preferences, expectations and beliefs, is already reassured both in principle and for practical purposes even before its occurrence. Thus Gray emphasizes the psychologistic individualism that pierces Hayek's theory. The emphasis on the agnosticist side of Hayek's theory is stressed further by placing unpredictability of individual behavior in the centre of the Hayekian theory of liberty. But, Gray argues, "[t]here is much more to Hayek's argument for ignorance than this" (J. Gray 1980a p.120). Hayek's argument, according to Gray is not simply that we cannot know the things-in-themselves (a somehow hasty statement since Hayek disavows the thing-in-itself as such, only to reintroduce it as a necessary assumption). It is also that sensory perception is always determined by *a priori* mental categories; and further that these categories are not features of the physical world. The implication of these presuppositions is that the determinative mental categories become undeterminable in their turn. "Indeed, in so far as he has taken pains to deny that any of the categories of our thought is an invariant feature of the human mind and has rejected the view that these categories reflect an unchanging

nature of things, Hayek's epistemology, (...), is in the end hard to distinguish from a form of pragmatism with deeply skeptical implications." (J. Gray 1980a pp.120-121). Hayek's view, then, is skeptical according to Gray, in two respects. First, we can never establish a direct link between our conceptual framework and the world. Second, we can never correct or adjust our conceptual framework by directly correcting its formal properties. Our ignorance is based on the combined effects of the above inabilities: we can never acquire knowledge of any practical value from our theoretical constructions which are by necessity highly abstract, nor can we organize our practical experiences in any concrete or precise (theoretical) way. In order not to be left with a completely agnosticist - and thus self defeating - approach, Hayek is forced into an appeal to practice as the primary *a posteriori* criterion of truth. "Those ways of thought which survive a natural selection process of competition with others *are presumed* to contain some truth about the world" (J. Gray 1980a p.121)[1]. Thus, the only way to avoid the complete relativity between truth and not-truth is (*a posteriori*) faith[2].

The second important criticism that appears in Gray's earlier writings refers to the relation of ontology and epistemology in Hayek's theory. According to Gray the autonomy of the mind is solely based on "a fallibilist epistemology combined with a naturalistic evolutionary view of intellectual life" (J. Gray 1980a p.122). Questions such as those concerning the freedom of the will and determinism are ruled out as irrelevant while no special presuppositions in ontology are required. "Throughout his writing Hayek seems to want to claim a kind of metaphysical neutrality for the epistemological beliefs which he places at the heart of liberalism." (J. Gray 1980a p.122). Gray's reference to this aspect is admittedly quite laconic. It only mentions the problem along with a remark on the apparent problems that the relativity of the ontological commitments creates in any theory which bases its social philosophy on a certain conception of human nature.

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[1] Emphasis added.

[2] See also discussion on causality in part II and comparison with Berkeley. It seems that Gray could not get over the arbitrariness of this position even in his most friendly critique. On that, see objection raised in the end of this part.

3. Anti-Rationalism and Anti-Liberalism: Forsyth's Critique

M. Forsyth's criticism emerges as the liberal answer to Hayek's "anti-liberal" and challenging doctrine. We have already mentioned his objections to Gray's attempt to present Hayek as a full-blooded liberal and, consequently, the reference to his view on the problems of the theory of mind will be brief. Forsyth objects sharply to what he calls - in a way similar to Gray's earlier critique - "Hayek's naturalist and physicalist account of the mind" (M. Forsyth 1988). His critique focuses on the problems generated by a quasi-mechanistic account that Hayek gives (mainly in *The Sensory Order*) of the nature and function of human mind.

Hayek's commitment to such an approach, is certified by his close disciple C. Nishiyama. Nishiyama argues that he knows of no other scholar who has pursued more thoroughly the idea of "model-building in explaining the mechanism of the activities of our mind" and further "Unless I am mistaken, according to Professor Hayek, all these activities are *without exception* in their fundamental character the acts of classification (...)." (C. Nishiyama 1967 p.340)[1].

According to Forsyth, then, Hayek is anti-liberal, in the first place because he bases the priority of the mind on unstable grounds. By arguing for an ultimate physical monism in ontology, Hayek discredits the time-honored supremacy of human mind and consciousness over matter. The fact that in the end mind is restored as the ultimate category accessible to man, is, for Forsyth, an insufficient argument. Furthermore, Hayek sharply distinguishes between human mind and consciousness. By presenting mind as a "particular order of a set of events taking place in some organism (...)" (F.A. Hayek 1952a p.16) Hayek sets forward a naturalistic account of it, which in turn is completed by a mechanistic characterization of "higher" mental activities as a mere repetition of activities that already take place in "lower" levels. Forsyth's objection to this is that it deprives mind and, indeed, consciousness of their qualitative difference from (and superiority over) simple mechanical processes that take place in the material world. The demand for a qualitative difference, rather than a mechanistically additive (quantitative) account, can be identified with a demand for

[1] Emphasis added.

a transcendental and metaphysical content of mind and consciousness. Forsyth's objection which points out that once we accept Hayek's naturalistic evolutionary definition of mind there will be no qualitative difference between human beings and beasts, rightly emphasizes the fact that there can be no Kantian and certainly no liberal account of man without an ontological premise granting ultimate supremacy to the categories of mind and consciousness.

Forsyth, again, criticizes Hayek on the grounds of the account he gives of consciousness. It is precisely the meta-conscious or supra-conscious processes that Gray defends so vividly, that Forsyth rejects. It is not altogether clear if Forsyth's critique goes as far as to oppose to the whole tradition that serves as the theoretical foundation of the Hayek's argument[1]. What is clear is that Forsyth explicitly aims at discrediting the account of conscious behavior as simply the "verbalization" or "making explicit" of what is already happening unconsciously. By implication, Forsyth also rejects the view that all conscious action is uncreative. Again his claim is that by depriving consciousness and conscious action of any qualitatively different essence, Hayek is basically reducing it to a mechanical process. Forsyth, then, rejects the idea of a meta-conscious or supra-conscious process playing the determinative role in human conduct, on the grounds that it cannot provide a theory with the "radical break with the order of nature" needed in all the liberal philosophic tradition.

Finally, his criticism also points to certain inner inconsistencies of Hayek's theory. The first point that he makes seeks to emphasize the contradiction that emerges from Hayek's claim that the "whole idea of the mind explaining itself is a logical contradiction, nonsense in the literal meaning of the word" (M. Forsyth 1988 p.242). The contradiction arises from Hayek's account of mind as a computer-like organism, as well as from his attempt to reduce all mental activity to physical processes. It seems, therefore, that while Hayek states that mind can never be explained - i.e. reduced to something else - what he is in fact doing is constantly to reduce mental to physical activity. Hayek's highly acclaimed adoption of "dualism

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[1] See the concepts of "knowing how" (as opposed to "knowing that"), G. Ryle (1945-46 pp.1-16 and 1949); "tacit knowledge" of M. Polanyi (1967); "traditional knowledge" of M. Oakeshott (1962). The link is rightfully established by Gray in his essays on Hayek. Although there might be less than an identity between the above concepts and Hayek's account, this point certainly contributes to a better understanding of Hayek's theory.

for practical purposes" comes as a result of an all too materialist (physicalist) account of the mind.

The second inconsistency pointed out by Forsyth concerns Hayek's claim that we must assume the existence of an objective world towards the recognition of which the phenomenal world is only an approximation[1]. Forsyth argues that the recognition of such an objective world presupposes the conscious distinction of the subject from his environment. Hayek presupposes, therefore, a decisive break (a qualitative difference) between the organism and the environment. And although Hayek is trying to minimize the problems that arise from this thesis by calling it yet another act of classification of the organism it seems plain that "[i]t is one thing physiologically to "typify" bundles of sensory impulses, it is another to classify sensory impulses *as such* as the appearances of an objective external world." (M. Forsyth 1988 p.243), the latter being a characteristic of human beings as a result of their self-consciousness which Hayek actually denies in his naturalistic account of man. Unfortunately, Forsyth does not seem to recognize any necessity in this contradiction. He only sees it as an accidental point that appears in a certain section of *The Sensory Order*. In other words, he does not see the gravity that Hayek attaches to this point as the only alternative to extreme relativism. After having destroyed any notion of objectivity and causality Hayek is left with the only solution - that is, to relativize completely the relation between truth and not-truth, real and not real[2]. The arbitrary introduction (from the outside, as an *a posteriori* category) of an objective world, which in addition man is supposed to approximate to, although inconsistent, is made necessary by the need for a certain notion of objectivity in a theory which is heavily based on subjectivism and relativism.

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[1] See also Gray's permanent objections to the legitimacy of this assumption. This point seems to rase criticisms throughout the ideological spectrum of Hayek's critics.

[2] See relevant discussion in part II with reference to the problem as it appears in Berkeley.

4. Hayek's Unstated "Scientism": Miller's Case for a Solely Epistemological Critique

A further reference to a critique, that deliberately limits itself to questions of epistemology alone, is perhaps useful at this point. E. Miller produces such a critique which seems to point out some central problems in Hayek's epistemology. Notwithstanding its scholarly achievements however, that approach is bound to remain incomplete not because of any circumstantial reason but because it actually presupposes a very similar ontology and above all a substantial agreement in political premises.

Miller's critique although partial, is not without interest. After presenting Hayek's theory of mind he draws a substantial distinction between Hayek's earlier and later writings. In his earlier writings, Miller argues, Hayek gave a different account of the mind and the process of knowing than in his more recent works. Based on a somehow partial reading of *The Counter-Revolution of Science* Miller argues that Hayek's case in the problem of mind rested on the admission that there are certain universal categories of thought. It is only through these categories that men can communicate at any historic period and it is precisely because these categories do not change substantially throughout human history that we can have an understanding of the past. This very premise, argues Miller, becomes questionable in Hayek's later writings. However, it seems unlikely that a temporal division of Hayek's work can be useful here. *The Counter-Revolution of Science: Studies on the Abuse of Reason*, was first published in 1952, the same year as *The Sensory Order* in which Hayek argues primarily on different grounds. The content of the former book first appeared in the form of articles in the period 1941-50 while the first draft of *The Sensory Order* dates from the late 1920s. Furthermore, at the same period Hayek published his best-seller *The Road to Serfdom* (1944). This book was written between 1940-43 while the main argument was first sketched in an article in 1938 and expanded in 1939[1]. Besides, Miller himself argues that "[t]he problems that arise in Hayek's account of human knowledge are visible already in *The Road to Serfdom*" (E. Miller 1976 p.385). It seems quite misleading to argue that Hayek underwent a conscious change of mind

[1] Data according to J. Gray 1986a pp.152-3.

during this particular period. Rather, the part from *The Counter-Revolution* that Miller isolates and overemphasizes constitutes one aspect of Hayek's theory while his "relativism" constitutes the other, which exists simultaneously.

Miller proceeds to the examination of *The Sensory Order* in which he rightly points out the inadequacy of Hayek's account of reality. After having divided the world into two orders, according to the way it appears to us and to science, Hayek emphatically disclaims any interest in what things "really are". But, Miller argues, his entire argument depends on the presupposition that the scientific account is, in fact, the real. From this observation Miller draws two conclusions. First, he says, Hayek breaks with the tradition that attributes qualities to the things themselves. "Hayek takes the view that science can account for things entirely in terms of their relations and effects, so that there is no need to assume that essentially qualities or forms inhere in the things themselves." (E. Miller 1976 p.388). And further "despite his unqualified condemnation of Descartes' philosophy, Hayek's own distinction between the phenomena, or the things as they appear to us, and the things as they subsist in the world external to our mind is a reflection of the Cartesian dualism between mind and world (...)." (E. Miller 1976 p.389). Indeed, Hayek does deny the existence of natural kinds or classes in the material world. At the same time, he also argues that science is trying to give an account of the world purely in terms of the relations and effects between things. However, all thought, including scientific thought, is of the same purely classificatory (mechanical) kind. It is, it would be remembered, precisely at this point that Forsyth disagrees sharply and, by the same token, points Hayek's inconsistency when he tries to establish a link between his theory of knowledge and a notion of objectivity. In the same vein, Gray stresses the fact that despite Hayek's assurance there is no legitimate way we can assume that the picture of the world painted by science constitutes an approximation to reality. The second point that Miller stresses is that Hayek's dualism is not implied for practical reasons - as Hayek himself argues - but is in fact a reflection of an ultimate ontological dualism. The point is admittedly brief and expressed in a rather abstract way, but at least it brings forward one of the main problems in Hayek's supposedly ontology-free theory[1].

[1] See relevant discussion in part II.

The second conclusion that Miller derives is what he calls Hayek's Kantian dimension. Briefly, it is the point discussed extensively by Gray - i.e. that all we can perceive is always determined by mental categories. The subsequent implication is that sense experience can never falsify our categories and consequently the denial of the empiricist "pure core" of sensations. Miller stresses the instability of the ground that Hayek has placed himself. On the one hand, he says, Hayek has to retain the idea that sciences give a correct account of the world because his own account of human cognition presupposes a valid physiological explanation of the principles that underline the process of knowing. On the other, Hayek's own conclusions on the subjectivity of the character of knowledge undermine the very possibility of objective knowledge. The categories which determine knowledge vary from each individual to another and from each historical moment to another. At the same time, and because they cannot be tested either in a reference to sensory experience or in reference to abstract conceptual thinking they become the only ultimate reality. Although Miller does not stress his critique that far, it seems plain that these conclusions may lead to a form of solipsism[1].

Miller's view is based on a presupposition - namely, that "[Hayek's] work in the special sciences (...) is intended to rest on an epistemological foundation." (E. Miller 1976 p.383). This presupposition can be interpreted in at least two different ways. Firstly, it may imply that the theory of knowledge occupies a central place in Hayek' system. Secondly, it may imply that his theory is based solely on epistemological grounds. The respective implications are quite far reaching. So far, the argument has been that the theory of knowledge and the critique of reason acquire a central position in the Hayekian system. Miller agrees with that but does not stop there. He seems to imply that the only adequate way to examine the whole of Hayek's system should be limited to a debate within and about epistemology. Perhaps his argument would sound less curious if he could produce some evidence that Hayek's epistemology is somehow self-contained - that is, that it has a considerable degree of independence from his ontology and methodology - and holds independently from its political implications. Although it is not clear whether this is possible at all,

[1] By "solipsism" is meant the attempt to reduce the world to subjective consciousness.

the fact is that Miller does not attempt it. On the contrary, he seems to mingle a series of political, philosophical and methodological topics with what he calls epistemology. For example, he states: "When Hayek has primarily in mind the political side of this modern conflict [the conflict between two "opposing" theories of liberty], he speaks of two kinds of individualism, or two traditions of freedom, or two kinds of liberalism. When he has primarily in mind the epistemological side of this conflict, he speaks of two kinds of rationalism or else of the struggle between rationalism and antirationalism" (E. Miller 1976 p.384). Such generalizations, however, tend to obscure the problem. Hayek does indeed equate a certain kind of individualism with a certain account of freedom and liberalism. But can we take these equations at face value if we are to launch a valid criticism? By accepting these equations rather uncritically Miller actually surrenders the ground on which any systematic critique should be based - namely, Hayek's inconsistent ontological premises and his attempt to present an ontology-free epistemology. In that sense, Miller's critique lies much closer to Hayek's theory than its author thinks[1]. It is not clear from the article whether this is only due to an essential agreement with Hayek in philosophy or whether it is simply an inadequate line of critique. There are certain indications, however, which point towards a combination of both. Miller stresses his agreement with Hayek in that any "adequate account of economics and politics must rest upon a proper understanding of the character of human knowledge" (E. Miller 1976 p.385). But, as we have seen in Forsyth's critique, the understanding of the character of human knowledge is a very different matter from the "mechanics" or the "know how" of knowledge and is, in fact, a problem which requires very specific ontological premises. Again, in his conclusions Miller suggests an alternative (other than "critical rationalism") to "constructivist rationalism". He argues for "a premodern understanding of theoretical and practical science". This science "(...) aims (...) at contemplative knowledge of the permanent forms of being. This rational activity ennobles the knower and reorients his life, but neither equips him nor inclines him to bring about a radical transformation of the world of everyday life." (E. Miller 1976

[1] Even a comparison with Gray's later writings may prove unfavorable in that matter. At least Gray mentions certain problems that arise from Hayek's "self-contained" epistemology and even thinks that some of them are unsurpassable.

p.393). Miller himself is quite frank both towards his own view and towards the essence of Hayek's theory. For him practical activity is and must always remain separated from rational conscious activity. "One need not set strict limits to reason, as thus understood, or deny its capacity to know the nature of things in order to *protect* the sphere of practice, for this kind of theoretical reason is not likely to *endanger* the practical sphere." (E. Miller 1976 p.393)[1].

Miller, then, far from criticizing Hayek on purely epistemological grounds implies a very specific ontology. But it so happens that this ontology is likely to bring about the same practical results as that of Hayek's. He overemphasizes the epistemological aspect not because it is self-contained but because this is the only point of difference with Hayek. As for the rest, it seems plain that there is a profound agreement between the two thinkers. They both agree that the main danger comes from the use of rationality and positive knowledge in the practical problems of everyday life - which is only another way of saying, in politics. They both have the same aim - that is, to separate effectively the domain of reason from that of practice and make the latter unpenetrable by the former. The political implication of this is that social life - viewed exclusively as the individual's microcosmos - has nothing to do with rationality; the former is considered as the result of some other parameter such as nature or luck. It is not that Hayek's theory is anti-rational or reactionary according to Miller, then; it is simply that its epistemology does not provide adequate support for its noble principles. "By basing his political theory on an insecure epistemological foundation, Hayek endangers those very principles of liberty that he wishes to defend." (E. Miller 1976 p.385).

5. The Conservative Aspects of Hayek's Theory: Oakeshott on Tradition and Implicit Knowledge

A further link between Hayek and conservatism can be established through a comparison of his theory with that of M. Oakeshott. It has been mentioned that there

[1] Emphasis added.

is a close relation between the theory of knowledge guided by meta-conscious rules of conduct and Oakeshott's "traditional" or "practical" knowledge. Oakeshott's account of the mind is as follows: "Mind as we know it is the offspring of knowledge and activity; it is composed entirely of thoughts. You do not first have a mind, which acquires a filling of ideas and then makes distinctions between true and false, right and wrong, reasonable and unreasonable, and then, as a third step, causes activity." (M. Oakeshott 1962 p.89) There are two elements in this definition, both of which are of major importance for the conservative account of mind. Firstly, Oakeshott presents a view of the mind largely based on an activist perspective. Knowledge and activity are considered as the component parts of mind. Secondly, thoughts are taken as the only constituent of mind. Knowledge, as Oakeshott has argued at length elsewhere[1], is of two kinds: "Technical knowledge or knowledge of technique" and "practical knowledge". The first sort of knowledge consists of the techniques involved in every art or science, or in fact in every practical activity that requires some sort of skill. This knowledge is in principle susceptible of precise formulation into explicit rules. It is the sort of knowledge one can find in every manual and guide. It is also the sort of knowledge which can be learned "deliberately" and remembered. The second sort of knowledge - "practical" - can neither be reflective nor be formulated in rules; it exists only in use. However, this knowledge is not esoteric; its distinction from technical knowledge only refers to the way it may be transmitted. "Practical" knowledge can not be taught or become a formulated doctrine but it can be imparted and acquired. The only way to acquire "practical" knowledge is by practicing the art (or science or activity) alongside someone who has already mastered it; or, in a social context, alongside social practice. That is why it can also be called "traditional" knowledge. The two sorts of knowledge, although distinguishable, are also inseparable. Knowledge proper involves both of them and so does every practical activity. However, Oakeshott seems to imply that the two sorts of knowledge, apart from being inseparable, are essentially of the same kind. In fact, his point might have been made more clearly if he had introduced one kind of knowledge of a dual character, instead of two sorts of knowledge. After all, this seems to be his intention.

[1] "Rationalism in Politics" in M. Oakeshott 1962 esp. paragraph 2.

The distinction between "practical" and "technical" knowledge is to be distinguished, in its turn, from "knowing how" as opposed to "knowing what"[1]. We cannot divide knowledge into a theoretical part that tells us what to do and a practical part that shows us how to do it, because "even in the *what*, (...) there lies already this dualism of technique and practice: there is no knowledge which is not "know how" (M. Oakeshott 1962 p.9). In that sense, knowledge is, for Oakeshott, "pre-eminently of this dual character" (M. Oakeshott 1962 p.9).

Hence, knowledge is presented as a concept deeply rooted in practice. But not practice in the sense of conscious rational activity of any kind; rather, practice, in Oakeshott's sense, is dissolved in the ever flowing continuum of human existence and reconstructed in the form of implicit, traditional mode of activity. In that sense, again, the definition of mind as knowledge and activity seems to obscure the point. If there is no knowledge without activity and if activity necessarily implies pre-eminent knowledge, what is the point of reducing mind into two component parts? What it could have been reduced to is rather a concept of the continuum of human tradition. Otherwise, the definition will always run the danger of leading to an account of mind composed of two temporally and/or spatially different qualities; and that is precisely what Oakeshott disavows in the face of Rationalism.

Oakeshott's point is that there is no way of conceiving of the mind other than through its actual mode of existence which encompasses all the major formulations of ideas, morality etc.. Mind "has no existence apart from, or in advance of, these and other distinctions." (M. Oakeshott 1962 pp.89-90). The identity of thought and action goes far enough to permit Oakeshott to question the existence of explicitly formulated principles determining action. Since activity necessarily implies a "knowing how" to act and since this "knowing how" can be reduced to explicit statements only partly, it is preposterous, literally speaking, to take any formulated propositions as the spring or the regulative factor of activity. On the contrary, it is activity itself that determines both the general mental formulations about it (principles, questions etc.) and the manner in which they will be met. Even in the case where man has some

[1] Here Oakeshott is possibly distancing himself from G. Ryle's distinction between "knowing how" and "knowing that". At the same time, he cites with appreciation M. Polanyi's concept of "tacit knowledge". (M. Oakeshott 1962 p.8n.; see also M. Polanyi 1964).

propositional knowledge about his activity, his knowledge goes further than what is contained in the propositions. "It is clear, then, that the activity of these men (and I would say all other activity also) is something that comes first, and is something into which each one gradually finds his way: at no time is he wholly ignorant of it; there is no identifiable beginning." (M. Oakeshott 1962 p.98)[1]. Thus, the ever-flowing continuum that is called mind is firmly established in conservative thought. Human conduct is thought to be determined by "what may be called the traditions of the activity" (M. Oakeshott 1962 p.99) of which individual projects form the parts. In Oakeshott's philosophy, then, traditional knowledge emerges as the sovereign, determinative factor of human conduct. All problems, as well as their answers, are tacitly implicated in activities and, in that sense, whenever one wants to account for an activity, one has to look not at the premises or the principles of the individual (for example, one's plans or ends) but at the traditionally determined modes of existence of the activities themselves. "Human activity is always an activity with a pattern; not a superimposed pattern but a pattern of the activity itself." (M. Oakeshott 1962 p.105).

Oakeshott's epistemology, then, is quite close to Hayek's. Hayek, along with Oakeshott, takes practice to be the primary category in the constitution of knowledge. Indeed this seems quite an unavoidable course for any theory which tries to establish an *a priori* limitation to human reason and knowledge and, at the same time, seeks to avoid a direct appeal to the metaphysical. Practice becomes the determinative factor of knowledge not because it helps in the understanding of the functions of mind, not because it is the ultimate verification of theory, but because it alludes to the intrinsic limitations of mind: practice - usually taken as individual activity - demonstrates by its high level of complexity and unpredictability that the mind can never come to a full understanding of things. This course avoids dependence on an *a priori* appeal to metaphysics. As Oakeshott puts it, "[t]here is, in fact, no external harmonizing power, insulated from the elements enjoying and in search of harmony" (M. Oakeshott 1962 p.109). The appeal to an external, superimposed order seems to be avoided[2].

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[1] Compare with Hayek's "undesigned results of human conduct".

[2] Notice the context of the phrase: it is not the supernatural (for example, divine) that Oakeshott is fighting against, but the natural - that is, the "order" in and of nature.

Notwithstanding that, such a conclusion might be superficial. When Oakeshott talks about external harmony or superimposed patterns he obviously means the harmony and patterns of the elements themselves - that is, the way the objective world exists. Hayek is doing the same thing when he states that the order we perceive in the objective world is the result of the function of our organizing mental categories. In that sense, Oakeshott is not excluding the possibility of a superimposed pattern or an external harmony as far as the "elements" are concerned. What he says is that there is no harmony in the external world while there is in our minds. This harmony is actually "superimposed" (since it does not exist in the first place) on the objective world. It is the same with activity. It is not caused by external reasons; it is not even caused by psychological motives. "We do not first have a desire and then set about discovering how to satisfy it; the objects of our desires are known to us in the activity of seeking them." (M. Oakeshott 1962 p.105). Acting is, thus, totally independent from the objective world. On the contrary, it is dependent on mind; in fact, it is almost identified with it (mind=knowledge+activity). The ontological supremacy of mind is, thus, established; but not in its full sovereignty. It is not conscious mind that determines the patterns or harmonizes reality. It is this unconscious part of it that constitutes the stuff of "traditional" knowledge. In that sense, the patterns of activity are not superimposed on mind but they certainly are superimposed on *conscious or rational mind.* The appeal to transcendence is not avoided; it has simply changed its form. Instead of taking the objective world as the primary determinative category which "superimposes" its patterns on mind, he takes the eternally existing "mind" as the determinative category of the objective world. Moreover, what should be noticed is the necessity of a sharp distinction between the physical world and mind. Mind is clearly *not* a part of the physical world in Oakeshott's account. Hayek is only eluding the problem when he states that mind is a part of the physical world; that is why he is immediately obliged to abandon this position. Oakeshott seems to be much clearer on this matter than Hayek. The rationality of conduct cannot be imposed from the outside, he says. Therefore, we must admit that it is a quality of the conduct itself. How is Oakeshott to avoid the danger of relativism, always present in such theories? By an appeal to traditional knowledge, once more: to be rational is to have *"faithfulness to the knowledge we have of how to conduct the specific activity we are*

engaged in" (M. Oakeshott 1962 pp.101-102). Traditional knowledge, then, rescues Oakeshott from relativism but at the cost of an open appeal to faith. His conclusion is profoundly static and, in fact, irrational (rationality is identified with faith). Oakeshott goes as far as to state that in sciences the conduct of a scientist can only be called "rational" "in respect of its faithfulness to the traditions of scientific inquiry" (M. Oakeshott 1962 p.103). Despite its firmly static character it is not altogether clear if Oakeshott's account has exorcised the danger of relativism. The inadequacy of his definition of "rationalism" is apparent in his statement that the only "irrational" scientist is simply "the scientific crank and the eccentric" (M. Oakeshott 1962 p.103). Although he has practically widened the notion of "rationality" to the extent that it has lost almost any meaning it still remains to be proved that there is an objective definition of the "crank" and the "eccentric" before any credibility can be given to his definition.

The implications of this epistemology are of profound importance. Mind, argues Oakeshott, is knowledge and activity. But the two elements are by no means equal. Let us examine knowledge first. It is, in turn, constituted as "technical" knowledge and "traditional" knowledge. These two elements are not equal either. While we do have "traditional" knowledge without "technical" knowledge there is no way we can have "technical" without "traditional" knowledge. Hence, the dominant pole of the relation is obviously "traditional" knowledge. Knowledge, thus, may not be equated with traditional knowledge but is certainly conditioned and delimited by it since the latter prescribes the patterns of acquiring knowledge in general. Activity, on the other hand, is conceived of as practical activity. But Oakeshott is emphatic that practice cannot be distinguished from knowledge in any temporal or logical way. Rather, it constitutes the demonstration of the existence of mind in general. Practical activity is, at the same time, determined by knowledge, as becomes apparent from Oakeshott's account of it[1]. It is the *a priori* knowledge of the objects of our desires that initiates and determines our practical conduct in order to obtain them.

But if knowledge is the determinative component part of mind and if traditional knowledge is the conditioning part of knowledge itself, it follows that

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[1] As cited *supra*. See also M. Oakeshott 1962 p.105.

traditional knowledge conditions and delimits the mind. When Oakeshott takes practice as primary in the constitution of knowledge then he already presupposes the determinative role of traditional knowledge in the constitution of practice itself[1]. In that way, he can combine two apparently opposite things. On the one hand, he can save the categorical qualitative primacy of traditional knowledge and imply its determinative role throughout the mental and practical existence of human beings. On the other, he can guarantee a securely diminished role of reason without appealing directly to metaphysics.

Practical activity, however, has another function as well: that of the link between mind and reality. Reality, according to Oakeshott, has no patterns of its own; it is our mental patterns that give it a harmonized appearance. By implication, nature itself, the objective world, emerges as the embodiment of traditional knowledge in the form of traditionally determined patterns, regularities etc.. This concept has apparent implications in political philosophy. Social reality, in the same way as objective reality, is deprived of any patterns of its own that can be explained rationally. Rather it is the product of the same traditional patterns that govern objective reality as well. In that sense, it cannot be changed through practical activity since it is the embodiment of the same sovereign category as governs practical activity. The social position of the individuals, as well as the political status of a society, have nothing to do with reason and conscious action; they, too, are determined by the inescapable traditional continuity of things.

Tradition, although a category of major importance, does not penetrate Hayek's social philosophy to the same degree. Hayek's epistemology is in the same vein as Oakeshott's. In social philosophy, however, Hayek replaces the sovereignty of tradition as such with that of the naturalistic evolutionary selection of traditions, at the cost of inconsistency. The essence, in terms of political theory, nevertheless remains the same. The social position of each individual is a matter of luck; a result of spontaneous powers that the individual can neither understand nor control. Take, for example, the role of the general rules in social order. Hayek's aim is to strengthen the liberal division between civil society and political power which he takes for

[1] Also J. Gray as cited *supra.*

granted. General rules, he argues, are the only guarantee of a free society. If rules, and not men, govern, then we have the "Great Society". What is the *alter ego* of that same proposition? Make general rules so sovereign that nobody can alter them; give them the status of superhuman and suprasocial entities. That is, grant them the absolute power to govern. If it happens that the content of these rules as "discovered" by Hayek tends to be identical with the order of a capitalist society there is nothing that could be done to change this. Furthermore, these rules are supposed to safeguard a certain sovereign sphere of individual private activity. Which is only another way of saying that the state too is granted an equally undisputable sovereignty in the "political" sphere. One has only to look at Hayek's "Model Constitution" to understand the extent of the strengthening of the state apparatus in the "Great Society". The claim for "limited government", strangely enough, seems to imply a hidden claim for a stronger state.

Despite the overall similarity of the two approaches, there are some interesting differences. The source of these differences can be traced back to Hayek's ambiguous position in respect to "scientism" and positivism. Despite his explicit condemnation of what he terms "scientism" and positivism (the latter mainly in the form of legal positivism), "scientism" is present in Hayek's work primarily in the form of psychological empiricism[1]. The whole of *The Sensory Order* is dedicated to analyzing "scientifically" the function of the mind. The theory of the cognitive process, thus, becomes an analyzable and, what is worse, a "scientifically" analyzable process. Hayek has probably rejected Oakeshott's appeal to faith without noticing its necessity to his own argument. He has put himself in the impossible position of rationally proving the *a priori* limits of reason. In that sense he has escaped an unconvincing appeal to faith but at the cost of inner inconsistency. As Forsyth rightly notices, the central premise of Hayek's philosophy is contradicted throughout the course of the main argument of *The Sensory Order.* In that sense, Hayek's naturalistic-mechanistic account of human mind comes into sharp contradiction with that of Oakeshott. The latter's view is clear enough: "The whole notion of mind as

[1] Most of Hayek's critics have pointed out his relation to positivism as one of the obscure parts of his theory. At the same time, Hayek has been bitterly attacked for "committing scientism", as will be shown later on.

an apparatus of thinking is, I believe, an error;" (M. Oakeshott 1962 p.90) and "The instrumental mind does not exist (...)" (M. Oakeshott 1962 p.91). Hayek's view, on the contrary, stresses the instrumentality of the mind. The whole account of it, from the formulation of the first fibre, the impulse, sensory (both pre-sensory and conscious) experience and the formulation of "maps" is given in naturalistic "scientific" terms and under the view that it is a mechanical process, similar to "computer-building". In that sense Oakeshott's criticism of Hayek's *The Road to Serfdom*[1] seems to reveal much more than a methodological disagreement.

There might also be more than a simple difference[2] in the nature of the part of knowledge which cannot be articulated. It seems that Oakeshott rejects the notion of a positivist and naturalist approach to mind altogether. Indeed, his critique of the "rational man" looks more like a critique of the "positivist" than, for example, of the "Marxist". Furthermore, he is explicitly against naturalism which he takes as being in the same vein as rationalism[3]. What Oakeshott rejects, then, is at least half of Hayek's initial premises[4]. If this point is valid, then, the subsequent difference in the account of unarticulated knowledge in Hayek's theory acquires a fixed place[5]. In fact, Hayek's account of unarticulated knowledge emerges as a result of his "scientistic" attitude. The corresponding part of the "scientistic" account of mind is the naturalist evolutionary account of knowledge. For Oakeshott, traditional knowledge is socially fixed in the sense of being determined by a given unalterable social practice, whereas, for Hayek, meta-conscious rules are determined by a process of natural selection and evolution. Thus, far from being universal and unalterable, they are constantly changing through a filtering which leads to the elimination of the

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[1] See M. Oakeshott 1962 p.21.

[2] See J. Gray 1986a pp.114-115.

[3] "Modern Rationalism and modern Naturalism in politics, in religion and in education, are alike expressions of a general presumption against all human achievement more than about a generation old" (M. Oakeshott 1962 pp.27-28n.)

[4] For a similar critique see also A.H. Murray 1945. Murray criticizes Hayek for "scientism" which leads to Cartesianism.

[5] Fixed, that is, as opposed to accidental or unaccounted for, as Gray suggests (J. Gray 1986a pp.114-115).

most inadequate among them. Hayek, in other words, while retaining the conservative conclusions of Oakeshott's theory, actually undermines them by an "ontology-free", all-powerful "scientism".

6. Hayek's Anti-Rationalism as a Result of his Ontological and Methodological Individualism: Quiniou's Critique

A rather different approach to the same subject is proposed by Y. Quiniou. Quiniou derives Hayek's antirationalism from his ontological and methodological subjectivism. He argues that Hayek starts from the liberal political proposition that state interference in social and economic life should be minimized. From this proposition follows the refusal of a central authority that may organize consciously and wittingly social life. Now these two basic *political* propositions are further perplexed and reproduced in various theoretical concepts of Hayek's theory. At the political level, they are presented as the gradual absorption of the individual by a transindividual state. Therefore, the refutation of "conscious control" becomes the refutation of the collective as such. Liberalism, thus, becomes a practical individualism which favors the element of spontaneity as opposed to social consciousness, anticipation, provisional planning, organization. At a theoretical level the refutation of consciousness appears as a critique of science; the idea that the social field cannot be understood and controlled intellectually. By implication the Hayekian individual is characterized by an unsurpassable ignorance. Another argument comes to complete this concept, which, according to Quiniou, demonstrates even more clearly the anti-scientific refutation of reason. "Hayek rejects what he calls "objectivism" in social sciences because, for him, the subjective (opinions, needs, desires, classificatory schemes etc.) intervenes in the very structure of social affairs and must, for that reason, intervene as such in their explanation: the subjective is not something that must itself be understood, but rather the starting point from which the social is comprehended; and there must be no question, in principle, of submitting it to a treatment somehow comparable (...) to the method of natural sciences." (Y. Quiniou 1989 p.77, my translation). In that sense the individual becomes an undeducible, self-

contained concept. Consequently, society is not a given totality that we can (re)construct rationally, but only an open totality created by purely adding the sovereign individuals, of individuals in inter-action. Therefore the total can only be reproduced abstractly with the aid of partial functional models, which are doomed to remain uncertain. Quiniou's conclusion is that Hayek's theoretical anti-rationalism, coupled together with his practical anti-rationalism, is only the theoretical consequence of his individualism (conceived of as "methodological individualism" in this case) (Y. Quiniou 1989 p.78). But the only way to achieve this is actually to presuppose it axiomatically: to take the individual as the ultimate explanatory concept is to grant it an unintelligible character and, at the same time, to create a zone of reality essentially inaccessible to reason; this consequence however was already inherent in the initial methodological choice (Y. Quiniou 1989 p.78). The weakness of the Hayekian theory, then, is to be found in its own premises. Hayek deprives social sciences of their proper subject which is to objectivize the subjective and socialize the individual. In doing so, he submits his individuals, which he has already placed outside social science proper, in an explanatory process which he compares formally and directly to that of the physical sciences. Quiniou's approach, thus, stresses the connection of theoretical (and methodological) individualism with the refutation of reason in politics. This relation in Quiniou's argument, is not a possible but a necessary one. If the social, because of its ultimately individual character, is not theoretically controllable, any attempt to control it practically, in terms of rational individual conduct, becomes by necessity not only anti-rational, but indeed dangerous; it becomes an effort to construct an artificial order which is by necessity contrary to reality because of its very constitution.

Quiniou's criticism constitutes an attempt to confront Hayek's theory in many respects and for that reason it will be used extensively as a reference in this critical analysis. However, it suffers from defects, the most important among them being that it ignores the inner problems and tensions of Hayek's theory. The main reason for that, it could be assumed, is Quiniou's initial point of view, namely, that Hayekian thought is unified and presents a real challenge to the Marxism which Quiniou is obviously trying to defend. By taking Hayek's thought as a unified *corpus* that constitutes a self-contained ideology, Quiniou misses some very important inner

inconsistences and defects that emerge from Hayek's ideas. Quiniou, in other words, is too willing to give Hayek the credit that his thought constitutes indeed a coherent ideology. In that sense, he remains silent in regard to those critics who have persistently pointed out that this is not the case. He also gives Hayek the credit of a thoroughly philosophical thought, which in fact belongs to a different tradition. On the other hand, Quiniou unlike most of Hayek's anglo-saxon critics who are particularly influenced by empiricism (even if they do not admit it openly) offers an essential connection between individualism[1] as the fundamental principle of liberalism and its potential political implications - the foremost among them being the conscious refutation of reason. In that sense, Quiniou's critique is of the utmost importance: it points out the fact that the very premises of liberalism are open to conservative and reactionary interpretations.

[1] That connection covers individualism both as ontological and as methodological premise; in that sense, the distinction between the two is transcended at least politically.

SECTION B: Social and Political Theory

1. Hayek's Social Theory as an Outcome of his Philosophical Premises

Many scholars have stressed the importance that the theory of mind has in the development of Hayek's social philosophy and in particular for the concept of spontaneous social order[1]. Gray takes the idea of the spontaneous social order as a direct outcome of the theory of mind. "If the order we discover in society is in no important respect the product of a directing intelligence, and if the human mind itself is the product of cultural evolution, then it follows that social order cannot be the product of anything resembling conscious control or rational design" (J. Gray 1986a p.27); it has to be a spontaneously grown order.

In the two following parts an attempt will be made to disprove this idea. The argument will acquire a dual character: on the one hand, it will be argued that the Hayekian premises - namely, a) that society is not the product of an *individual* intelligence, and b) that the mind is a product of cultural evolution - are both insufficient and too conclusive. The result is, that the existence of spontaneous social orders is far from an effortless assumption. In fact, it presupposes certain postulates that are not included in Gray's account. What is more, these postulates already comprise the conclusions that Hayek apparently derives as a result of his methodology. On the other hand, it will be argued that Hayek's theory of the mind, taken consistently to its final outcomes, might easily produce orders greatly different from those prevailing in his "Great Society". This argument will take the form of contrasting the logically potential outcomes of his theory with his equation of the spontaneous order and what he terms a "free market society". The upshot of the argument will again be that neither Hayek, nor any sympathetic scholar, will be able to maintain a consistent reasoning when arguing on current social and political topics. Hence, the suggestion of a "pragmatist" critique of his theory as determined by the current needs of capitalism. In what follows, however, a limited survey of the vast

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[1] See, for example, M.M. Wilhelm 1972 and A. Shenfield 1976.

literature related to Hayek's social and political theory will be attempted. The aim will be to show that Hayek's theory is bound to disintegrate under sustained criticism (J. Gray 1981 p.77). Such criticism has been launched by a wide spectrum of political theorists leading almost invariably to the successful demonstration of Hayek's inner inconsistencies.

2. Societies as Spontaneous Orders: Gray's Intellectual Journey

In his later writings, Gray is inclined to present, rather than criticize Hayek's theory of spontaneous orders. Spontaneous order in society emerges as a necessary outcome of the nature and function of our minds. Mind itself is a spontaneous order[1]. Furthermore, our ideas are supposed to be the "visible exfoliation of spontaneous forces". In that sense, "the order of our ideas is supervenient upon the spontaneous order of the mind, which it can never reconstruct entirely or hope to supplant." (J. Gray 1986a p.30). This interpretation of Hayek's ontological "monism", which for "practical" reasons *always* becomes an actual dualism, serves as the foundation of spontaneous order in society. Men, as conscious beings, can never govern either their mental or their practical existence which is (by definition) depended upon an unseen and uncomprehended structure of spontaneous orders in nature (and society). The logical justification of the spontaneity of social life, thus, lies entirely in the presuppositional domain that Hayek accounted for, when trying to explain the "nature" and function of the mind. It is in no observable sense, a conclusion related to the nature or origins of society *per se*. Rather, it is a conclusion of negative kind, reached by the absence of any other plausible explanation once the Hayekian theory of the mind is established. It must be noted, however, that both Hayek and Gray seem to occupy a middle ground so far as the necessity of the existence of spontaneous order in society is concerned. What is not clear in both writers is whether a spontaneous social order is an unavoidable necessity, or merely a desirable outcome. Hayek's

[1] *En passant* it should be noticed that for Hayek, as for Oakeshott, mind is to be distinguished from brain.

defence of the need (but not necessity) of a theory which will explain society in terms of spontaneous orders is indicative. "Of theories of this type, economic theory, the theory of the market order of free human societies, is so far the only one which has been developed over a long period (...)" (Hayek 1967/69 pp.71-72). Likewise Gray's presentation of the spontaneous order endorses the view that a spontaneous order can "cope with the ignorance we all share of the countless facts of knowledge on which society depends." (J. Gray 1986a p.28 and 1982 p.34). This point gives an account of the advantages that a spontaneous order has over something which is *not* a spontaneous order - that is, it accepts indirectly the possibility of the existence of a non-spontaneous order. A few lines below Gray expresses the same thought in an even more ambiguous way when he states simultaneously that societies always depend on practical (tacit,implicit) knowledge and that the *advantage* of a spontaneous social order is that it can make use of that knowledge. Again, Gray argues for the "impossibility" of central planning on two grounds. Firstly, nobody can concentrate the practical knowledge on which social life depends because this knowledge cannot be explicit and/or transferable. Second, since everybody is governed by supra-conscious rules, even the directing intelligence itself would be subject to such government. (J. Gray 1986a p.25 and 1982 p.32).

In an earlier, and substantially more critical argument, Gray presents the same argument as follows: "In the Hayekian system the crucial objection to interventionist programs, (...), is not *merely* that the results of such programs are unpredictable (...): it is that interventionism presupposes a synoptic and concrete knowledge which no one man or group of men can in the nature of things posses." (J. Gray 1980a p.126)[1]. The problem, thus, is that although the existence of a non-spontaneous order is ruled out in theory, practice shows that some societies are non-spontaneous at least to a certain extent. Besides, that is precisely why Hayek attacks the welfare state. Now, Hayek could have argued that at the most, planners think that they can plan societies, but that this is a false belief. The problem with this line of argument is that it implies

[1] Emphasis added.

a notion of "false consciousness"[1]. Notwithstanding this implication, this society has still got to be a spontaneous order. If the necessary condition of a social order to be spontaneous is that *we* must treat it like one then the notion of spontaneity looks rather problematic[2]. In one of his latest writings Hayek seems to "illuminate" his inconsistency when he states that there are only two attitudes towards a spontaneous order. One must either create an institutional framework within which it will function, or upset the functioning of the "free" market. He even argues that a spontaneous order created by a perfect market competition will not provide everything that we need and therefore there is "ample opportunity for using deliberate organization to "fill in" what the market cannot provide" (F.A. Hayek in A.J. Anderson 1986 p.145). All of a sudden, then, we learn that rational planning is not only possible but, in fact, necessary for a "free" market society to exist[3]. It seems, therefore, that the furious attack that Hayek launched against rational planning in a series of books, only holds - if it holds at all - as long as it concerns mind in the abstract and/or an equally abstract individual. But as soon as we have to face a concrete social formation, the link between abstract mind and concrete social formation becomes quite debatable.

Before we proceed to the examination of the main component parts of social spontaneous order as presented by Gray, we may consider an objection he presented in his earlier writings, which is bound to remain unanswered in his later account of the subject. Gray objected to the use of the notion of spontaneous order in society for two main reasons. First, he thought that the use of spontaneous order in society is only a generalization of an idea used in the understanding of market processes. In the market place, he says, when the price mechanism does not operate the process that might bring about an equilibrium is not clear. Second, even when this tendency of equilibrium is present, it is totally up to the entrepreneurs to learn and profit from it.

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[1] This, of course, generates a further question: in what sense can it still be argued that each individual is the best judge of his interests if we are to exclude a whole group (possibly a whole society) of those who believe that their interests are better served in a "planned" social order? Can we have a case of a "deceived" society? It seems that spontaneous orders are only valid to the extent that they accommodate Hayek's notion of "Great Society".

[2] See also M. Forsyth 1988 p.250 and relevant discussion in parts II and III}

[3] Was Popper wrong in identifying his "social engineering" with Hayek's theory? see also relevant discussion in part II.

But this process of learning might fail to take place. Consequently, "If the spontaneous coordination of activities may fail even in the marketplace, how strong is the presumption that it will occur elsewhere?" (J. Gray 1980a p.131). In Gray's opinion, then, "(...) it is a fundamental defect of Hayek's treatment of the notion of spontaneous order that he gives us no clear conception of how such an order is formed and maintained outside the sphere of market exchanges." (J. Gray 1980a p.131). The shift in Gray's later writings is radical, although not always well founded. Thus, in his later writings he states that "Examples abound in Hayek's writings of spontaneous orders apart from the market order." (J. Gray 1986a p.29 and 1982 p.34). Even if one accepts that Gray grossly overlooked these examples in his earlier critique, the procedure of the formation of spontaneous orders in society still remains to be accounted for. Characteristically enough, Gray admits that Hayek's examples refer to spontaneous orders in nature (for example, the formation of crystals) while his main concern is to stress their importance in society (J. Gray 1986a p.29 and 1982 p.34)[1].

There are three distinct but interrelated theses that combine the idea of spontaneous order in society. First, there is the thesis that social institutions arise as a result of human action but not of human design. Second, there is the thesis of implicit knowledge which speculates that our knowledge of the world is necessarily, partly inarticulable. Third, there is the thesis of the cultural evolution by the natural selection of traditions. Gray's critique in his earlier writings proceeds as follows: Hayek believes that an adequate account of society must rest on an adequate account of human nature (J. Gray 1980a p.121)[2]. But Hayek, against Aristotle or even the natural rights theorists, believes that human nature is not unalterable but traditionally determined through the spontaneous growth of culture. Some problems are already

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[1] The smuggling of natural categories in social theory is common practice for Hayek. The area in which this phenomenon is most widely applied is that of the social institutions that emerge as a result of the rule of law. Perhaps the most penetrating view on that matter is to be found in J.W.N. Watkins' critical approach (in A. Sheldon 1961). See also R. Aron (1961).

[2] The status of human nature as a necessary presupposition in Hayek's theory is not altogether clear. After all, it is because of its unclarity that Gray accused Hayek for pure proceduralism. However, the view that an account of human nature is vital for the Hayekian theory is widespread among scholars. For example, M.M. Wilhelm (1972 pp.170-171); also R. Aron (1961) for a similar view. The same point is also made by G. Walker. Walker states that Hayek's social theory actually starts from his assumptions about human nature (G. Walker 1986 p.10).

apparent here. Since Hayek argues that there is always a limit in what human beings can cognitively understand how can he express an opinion on the existence - or non-existence - of something that lies completely in the realm of the "beyond"? Gray points out that Hayek is constantly seeking to establish a metaphysical neutrality for the epistemological beliefs which he calls liberalism (J. Gray 1980a p.122). This ontological relativism, however, seems to leave little space for a reasoned account of the conception of human nature on which Hayek's social philosophy depends (J. Gray 1980a p.123).

In referring to the problems emerging from Hayek's account of spontaneity in social orders, Gray focuses on the evolutionary utilitarian aspect. Since the institutions of a spontaneous social order are not the products of human design their establishment cannot be justified in terms of the benefits that their creators foresaw. They can only be justified retrospectively: it is through the actual conditions that they have produced once they have been established that people could perceive their benefits. Hayek says that "No institution will continue to survive unless it performs some useful function." (F.A. Hayek 1960 p.433n.)[1]. Therefore, what is good or bad will appear by the decline of the groups that adhered the "wrong" beliefs. On these grounds, Gray accuses Hayek of "scientism" and "social Darwinism". First, he says, Hayek cannot find a criterion or measure for the utility he is appealing to. It must be noted that this criterion emerges almost miraculously in his later writings. As a version of a self-evident criterion Gray says that the success of the adaptation of rules is to be measured in terms of "the growth of human numbers"[2]. This is quite an obscure criterion[3], to start with, and one whose relevance to liberalism is less than obvious[4]. The argument seems to be that a society that favors the growth of its population is a society that provides higher living standards. Higher standards and the subsequent growth of population will lead to higher productivity which in turn will

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[1] In fact Hayek is quoting from A. Macbeath 1952 p.120.

[2] See F.A. Hayek 1983 p.48.

[3] Also C. Kukathas 1989 p.194.

[4] Also G. Walker questions the self-evident of the desirability of the preservation of the human race as such (G. Walker 1986 p.60).

provide even higher standards and thus the possibility of a further growth of population, and so on. Justifying the growth of population in terms of high living standards however is quite problematic since the growth of population in most of the third world poor countries is much higher than that of, say, Europe where living standards are obviously higher. What is more, in those countries the increase of population seems to go along with an actual decrease of living standards. But even if we were to evaluate a single society at two different historical periods according to the increase (or decrease) of its population, the argument would still suffer from its profoundly unhistorical character. For, as becomes clear from the various accounts of the "merits" of capitalism that Hayek gives in many parts of his work, when he argues that higher living standards emerge in a particular society at a particular historical time he makes a direct comparison with the standards of a previous historical period. Thus, for example, when he argues for the better living conditions in the 1840s (incidentally known as "the hungry forties") and 1850s in England he does so by directly comparing the productivity of that period with that of the pre-industrialized era (F.A. Hayek 1954). But what this argument refuses to take into account is the actual level of development of the productive forces at each period. Thus, instead of relating living standards to the historically determined relative development of productive forces and social relations, he "measures" them against some obscure unhistoric quantitative criterion. At the same time, the above argument refers only to the productivity in that society but it says nothing of the needs of the people in it. It is only because Hayek takes a disturbingly static view of human needs that he can conclude that a growth in productivity automatically implies better living standards in a society[1].

What is more, Hayek himself seems skeptical on this point. In his later writings he confesses that he "would not agree that the process of selection by which the morals of capitalism have evolved (...) consists wholly in assisting the growth of population. Many of the worlds peoples would probably be much happier if population growth had not been stimulated to the degree that it has." (F.A. Hayek in

[1] For a social-democrat argument on human needs, see R. Plant and H. Lesser and P. Taylor-Gooby 1980.

A.J. Anderson 1986 p.149). His general argument seems to point against a further increase of population (on voluntary grounds, of course) because resources are limited. Second, in his peaceful evolution of competitive traditions, Hayek seems to presuppose an already well-established liberal system. If, however, the choice is between rival political systems there is no guarantee that liberalism will always have the advantage. The same criticism, viewed from its conservative perspective would lead to "what exists is good", thus justifying for example, bureaucratic expansionism while condemning any reforming attempts towards a "free market society". Gray concludes, much in the sense of D. Miller's critique[1], that Hayek offers a foundationless liberalism and that his theory aims exclusively at a defence of liberalism against collectivist movements but is quite inadequate for a preliberal or a postliberal society. Gray comments on this that "First, we lack anything resembling a criterion for cultural "fitness" or utility of forms of life, and we are no less in need of a measure of it. Second, we have nothing in society akin to the mechanism of the natural selection of genetic accidents in Darwinian theory which guarantees the survival of successful practices (however utility is defended). Third, and most crucial for Hayek's purposes, there is nothing to support the belief that an unplanned social order (or "cosmos") will always or typically be a liberal order." (J. Gray 1981 p.83).

The Hayekian theory occupies "an unstable middle ground" between skeptical conservatism and liberalism. It cannot avoid relativism since it allows an unlimited variability in the content of "true law" that emerges as a fruit of evolutionary processes. "Further Hayek faces in a sharp form the standard dilemma of the utilitarian reformer, in as much as any disturbance of time-honored arrangements is bound to undermine those reasonable expectations whose protection figures so prominently in utilitarian accounts of general interest." (J. Gray 1980a p.130). Finally, it must be noted that Gray places Hayek closer to the conservative tradition in that he advances a claim for the exemption of at least some of the fundamental liberal principles from continual criticism[2].

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[1] See D. Miller 1977 pp.124-126.

[2] In that Hayek breaks radically with Popper who insists in the need of continuous piecemeal criticism in all social institutions. It is again, a political rather than a philosophical difference that divides the two thinkers.

3. Tradition and Evolution: The Tension Between the Existing and the Desirable in Wilhelm's Critique

M.M. Wilhelm's critique is roughly in the same vein as Gray's earlier writings[1]. The first tension that Wilhelm detects in Hayek's account of society[2] is that whereas he attributes major importance to the value of institutions that have evolved through a traditional long-term process, he also seeks to expose all institutions to the challenges of the "free market", regardless of the effects that this exposure might bring about[3]. Now, this critique - although not quite accurate - seems to point to the tension between the conservative and the "scientific" evolutionary aspects of Hayek's thought. The reason why the critique is not completely accurate is that it overlooks the smuggling of the basic premises of the "free market" order at the very beginning of Hayek's evolutionism[4]. Thus, Hayek can argue at length, using both aspects of his theory interchangeably (and eclectically) without facing any serious problems[5]. The "inaccuracy" of the critique, thus, lies in that it does not stress the fact that Hayek takes capitalism both as a *de facto* condition and as a necessary conclusion of his evolutionism. What Wilhelm could have said, instead, is that according to his epistemology and methodology, Hayek should seek to expose all institutions to the challenges of any established social order, regardless of its kind - that is, regardless of whether that will be a "free" market order, or any other. Notwithstanding this point, the critique holds to the extent that it stresses that, according to Hayek, institutions acquire value from the mere fact of their existence and not from any sort of rational justification. To that extent Hayek's proposition that all institutions - including those which are now traditionally embedded in current

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[1] See M.M. Wilhelm 1972 pp.169-184.

[2] Much in the sense of M. Polanyi (1951 chapter 7).

[3] Wilhelm is probably based on Hayek's account of science in F.A. Hayek 1978 pp.18-19.

[4] In that sense, Gray argues that Hayek's evolutionism only holds within a well-established liberal society (as cited *supra*).

[5] For example, the possibility of destroying freedom of thought by the extension of doubt to the field of traditional ideals. On that see M. Polanyi 1951 p.97.

social life - should be judged according to some fixed principles of a "free market" order, remains a contradiction.

The second objection raised by Wilhelm derives from the demand for an *a priori* qualitative distinction between desired and existing principles[1]. "Unless Hayek claims the right to decide which principles among those in a variety of societies are "truly" basic and evolved, any society, and especially one with a democratic government, may challenge Hayek and claim that it possesses certain anti-individualist, goal-directed principles - evolved, certain, and, in a sense, of general application - to justify the coercive norms that by Hayek's standards conflict with many of the premises of liberalism." (M.M. Wilhelm 1972 p.180).

A related but distinct set of problems emerges through the Hayekian account of the legitimate functions of the state. Wilhelm points to the inadequacy of the criteria that Hayek implies on that matter. Hayek would allow certain state activities - such as the provision of theatres, stadia and parks - under the condition that nobody in the "free" competition would undertake such jobs. However, the taxation required for such policy, as well as the fact that by undertaking it the state actually supports specific programs in the arts and recreation, seem to clash with the principles of a (Hayekian) liberal society. This problem is related to another more serious one. How can we be sure that the state activity through its representatives will in fact limit itself only to the "agenda" prescribed by Hayek? Hayek's answer is that it will happen if there is sufficient agreement among individuals on principles of liberalism. Wilhelm rightly points out that this conflicts with Hayek's moral and psychological principles according to which individuals are motivated by self-interest. Rather, what should be expected is that self-interested bureaucrats will attempt to enlarge their share of authority - particularly in the absence of specific incentives that would encourage dedication and the equally important absence of a sense of commitment. The same remark may be extended to the judicial process, where judges are expected to have a similar behavior. Wilhelm takes into account Hayek's attempts to overcome the inadequacy of psychological tests by introducing the "objective" test of generality and abstraction, but he claims that the result of this attempt to extract "objective" law from

[1] For similar approaches, see M. Forsyth 1988, R. Hamowy 1978, R. Aron 1961.

the subjective effort of the authorities who administer it is to accept a rule of principle which is, in fact, unreal (M.M. Wilhelm 1972 pp.181-182).

4. The Rule of Law and its Relation to Individual Freedom

It is in the context of the spontaneous social order that Hayek presents the idea of liberty under the rule of law. His notion has been widely criticized both as an incoherent result of his - already problematic - premises and as an inadequate defence of liberalism. Gray, in his critical period, regards the Hayekian notion of liberty as a purely instrumental value (J. Gray 1981 p.74). M.M. Wilhelm argues that liberty has a dual substance in Hayek. It is, at the same time, both an instrumental utilitarian means towards the "fullest development in the interindividual process" (F.A. Hayek 1952b p.86) and a value in-itself[1]. Gray also attributes to Hayek the intention of presenting a "value-neutral" concept of individual freedom[2]. The objection that Gray presents is that Hayek's notion of liberty although seemingly negative is, in fact, a positive one. It is positive in that it places liberty in the conceptual framework of coercion and law. This results in a definition of a free state as a state where one lives under a regime of abstract rules which are applicable to all. Liberty, thus , is obedience to laws. How, then, are we to judge among the infinite number of sets of rules that exist? Hayek's criterion is the utilitarian one of the common good - where common good is identified with facilitating the achievement of human (that is, individual) purposes. Therefore, "In allowing that the defence of rules of justice is finally to be conducted in terms of their promotion of desirable consequences, Hayek (like Hume) must in this extended sense be regarded as a utilitarian theorist" (J. Gray 1981 p.76)[3].

Hayek's commitment to the rule of law as the absolute safeguard of liberty

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[1] It does not look as if Wilhelm finds anything paradoxical about this dual character of liberty. The troublesome position of liberty in Hayek's theory will be discussed in part II.

[2] In the sense that it is useful to all "regardless of their view of the nature and sources of liberty's value" (J. Gray 1981 p.74).

[3] Hayek is actually characterized as an "evolutionary system-utilitarian" (J. Gray 1981 p.77).

raises new objections. In an analytical sense, this approach is inadequate, since it justifies almost any measure taken by positive law as long as it has some formal attributes (generality, equality before the law) and is felt to be in accordance with traditional values. "Felt", indeed, is the right word, since the major part of these values or patterns is not articulable or even conscious. As J.W.N. Watkins has pointed out, Hayek is trying "to assimilate impersonal social forces and general civil laws to noncoercive forces and laws of nature" (J.W.N. Watkins in A. Sheldon 1961)[1]. Hayek, says Gray, is mistaken in thinking that anything substantive can be derived from the abstraction and generality of the rule of law; this is not a sufficient criterion of a legal framework of a liberal character (J. Gray 1981 p.78). It is not a sufficient criterion even of stability and predictability[2]. Again, not much that is important is contained in the demand for equality before the law basically because there is no objective way of defining the categories in which men can be classified. The rule of law as such cannot give any adequate account of principles such as civil and political rights unless a further ("external") justification of these rights is endorsed. In Hayek's case this justification could have come from a natural rights theory, which is precisely what Hayek disavows emphatically. The result can only be inner inconsistency. His claim that the rule of law can function as a safeguard of individual liberty is only valid - if at all - in a society that already accepts (to a large extent uncritically) the basic liberal principles (J. Gray 1981 pp.78-79). Finally, the Humean-utilitarian argument is no less inadequate for a defence of liberal principles. It might function only in circumstances where all other moral rights will be clearly rejected on the grounds of having less utility-promoting side effects.

In Gray's view, Hayek is actually inverting the relation between law and moral rights. Rights are presented as variable and defeasible guarantees of protected areas of action "subject to an overriding test of their utility-promoting effects." (J. Gray 1981 p.80). Liberty emerges as a moral notion. Much in the sense that Locke gives to it, Hayek attributes a normative sense to liberty according to which to be free is to

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[1] See also R. Aron (1961 as cited *infra*) and F.R. Cristi (1984 as cited *infra*).

[2] B. Leoni has persuasively demonstrated this point (B. Leoni 1973). He has also suggested an alternative common law tradition.

have the right to act. Not that there is anything wrong in relating normative judgments of rights with freedom[1]. Hayek's error is that he does not specify these normative rights in any but a purely procedural way.

In his later writings, Gray has produced a very different approach to the Hayekian theory, as has already been mentioned above. There are extensive references to Gray's views throughout this work so their presentation at this point will be kept as brief as possible. His approach in his later writings is mainly defensive and apologetic. Thus, he tries to meet a substantial amount of criticism that has been launched against Hayek (notably in J. Gray 1986a). The last part of his book, however, contains certain criticisms which, it would seem, survived his "shift" to the Hayekian ideals. First, Gray argues, Hayek's account of the mind as a classificatory mechanism, shaped exclusively by an evolutionary process, always leaves open the possibility of it not picturing the structure of the world. The fact that we have so far survived by adapting ourselves does not in itself support the view that the evolutionary process generates any sort of gradual approximation to objectivity (it could be a sheer coincidence). In that sense, we can at least hypothesize that the evolutionary trend may be leading us ever further away from truth. Second, even if the above mentioned epistemological objection to evolutionism could be met, there still remains another set of questions. These relate to Hayek's assertion that the dominant traditions in society are necessarily functional and adaptive for the needs of their members because they are the product of the natural selection of rival practices. The main problem of this thesis, according to Gray, is that we lack a criterion according to which we can verify the functionality of traditions. The population test, suggested by Hayek, is ruled out as too ambiguous. A third problem, closely related to the above, emerges from the way the mechanism of natural selection works. Hayek suggests two mechanisms - emulation and migration - which in no way seem to account for all possible cases. In any case, what is clear is that the natural selection of traditions thesis need not have outcomes that favor liberalism, as Hayek suggests. Finally, Hayek recognizes the possibility of a non-viable morality emerging from a natural selection process. It

[1] Gray does not seem to see any inconsistency in Hayek's verbal commitment to "value-free" and negative liberty.

seems, however, that he does not understand that this possibility puts his whole theory in crisis. Gray does not think that the problem lies primarily in the tension between traditionalism and libertarianism (although it is not altogether clear how this tension is to be met), but in the conflict between the rationalist and skeptical aspects of his theory. The mere recognition of some components of reality as non-viable, is itself a product of rational insight. But if the problems borne by such elements or traditions in actual life are to be solved in a rationalist way, the core of his system - evolutionism of spontaneous orders - disintegrates. The political implications of Hayek's evolutionary account of social institutions and orders in general are far reaching. Even if the natural selection thesis could be given an unambiguous form, as well as analytical power, it would still lack any moral content . Evolutionism, in Gray's opinion, is, after all, doomed to the identification of the good with the prevailing. "The result of the moral emptiness of Hayek's theory of cultural evolution for political philosophy is that his system lacks definite normative standards for the critical assessment of political practice." (J. Gray 1986a p.142).

5. The Libertarian Objection to the Rule of Law: Hamowy

Perhaps the most influential, and often quoted, critique of Hayek's concept of freedom under the rule of law within the libertarian trend, has been developed over the years, by R. Hamowy[1]. Hamowy points out that Hayek's definition of individual liberty, as well as the rule of law, are inadequate. Thus, his argument does not extend to all the problematic aspects of the Hayekian theory. Rather, he takes Hayek's starting point - namely, his definition of liberty and the rule of law - at face value, and then tries to prove that it is inconsistent with actual or potential cases of social life. This line of argument, of course, admits much that has already been disputed in this presentation.

Much in the mainstream of Hayek's libertarian critics, Hamowy criticizes Hayek for not having a positive theory of rights prior to and independent from his rule

[1] R. Hamowy 1961 pp.28-31; 1971 pp.349-377; 1978 pp.289-297.

of law concept. This point is one of the most frequent criticisms to Hayek's theory. However, most of the critics stop at this point. The result is that this tension acquires an inexplicable character. The explanation of its existence - when such an attempt is made at all - is that it is a logical mistake or even a naivety of Hayek's. The alternative, proposed in this critique, is that Hayek is forced into a contradiction as long as he wants to keep certain of his premises intact. Hayek has made clear, right from the beginning of his long career, that in his thought there is no place for *a priori* transcendental solutions[1]. In that sense, he refuses to take the transcendental step of founding his social philosophy in a theory of rights - be it natural or otherwise - thus breaking radically with the mainstream of liberals and libertarians. Instead, he produces a "scientific" theory based on "value neutral" presuppositions that can only lead to indisputable conclusions in a rather positivist way. If Hayek were to stop at this point, then his theory could have been criticized in terms of "legitimate" premises and coherent conclusions - in short, in abstract theoretical terms. The problem, however, seems to be that, even more deeply rooted than positivism, or, for that matter, any other theoretical premise, lies his decision to defend capitalism as the dominant socio-economic formation[2]. That this is Hayek's actual starting point is shown by the countless inconsistencies into which he leads himself whenever the "free market" society tends to lose its absolute sovereignty[3]. It is also shown in the way his critics face him. Every little part of his theory has been ruthlessly criticized from different points of view: his economic theory, his theory of the mind, his methodology, his social philosophy. Conservatives are "afraid" of the results his "scientism" might bring about; liberals accuse him of anti-individualism and profound attachment to traditionalism. What seems beyond any dispute, however, is his pro-capitalist attitude, as well as his intention of defending capitalism against various

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[1] The stress should go to *a priori* because, as it will be argued in parts II and III, certain elements of his theory - notably the "rule of law" doctrine - acquire an *a posteriori* transcendental character.

[2] See also A. Belsey in R. Levitas 1986 p.181.

[3] On the difficulties one is bound to face when one tries to give a "logically consistent" summary of Hayek's thought, see P.W. Dyer and R. Harrison Hickman 1979 p.386. Also G. Walker 1986 p.32 and p.35.

"dangers"[1]. That is why almost all the existing critique, at least as far as the conservatives and liberals/libertarians are concerned, focuses on the success (or, indeed, most of the times, on the inadequacy) of his case *for* capitalism.

Notwithstanding this point, Hamowy's argument summarizes the libertarian view by stating that it is impossible to formulate any intelligible notion of coercion, in the case of the negative definition of freedom, "(...) without prior recourse to a theory of rights and that all attempts to define freedom result in hopeless conceptual muddles without such a theory." (R. Hamowy 1978 p.287)[2]. Hayek's definition of coercion is problematic, according to Hamowy, on more than one ground . If coercion is the manipulation of one's data (or mind, in the sense of this term as employed by Hayek in *The Sensory Order*) in order to serve another man's purposes and if coercion necessarily implies the possibility of an alternative course of action (F.A. Hayek 1960 p.133) then a paradoxical conclusion occurs. Whenever one has no alternative[3] coercion does not occur. Therefore, if one is trussed up without the ability to move, one is still free in Hayek's sense. Hayek's definition is also problematic in that it states that one is free as long as one's environment is not manipulated in a way that benefits another. But, Hamowy argues, this definition is useless as such, because under it the overwhelming majority of human interactions are taken as coercive[4]. This definition could become meaningful, however, if Hayek could distinguish between coercive "manipulation" and the terms in which one is prepared to render one's services. Hayek is trying to establish such a distinction by saying that as long as the services of somebody "are not crucial to my existence or the

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[1] There is hardly any scholar who doubts Hayek's pro-capitalist attitude. Indeed any differentiation on that point would probably focus on the content of the term "capitalism" rather than on Hayek's attitude towards it. In fact, Hayek himself has repeatedly identified capitalism with his blueprint.

[2] Hamowy also quotes with apparent approval H.J. Mc Closkey's definition of liberty, according to which "The historically important concept of negative liberty is that of non-interference with rights, where rights, their content, nature and grounds are variously conceived and where liberty is usually thought of as one among other rights as well as consisting in liberty to enjoy rights in general." (H.J. Mc Closkey 1965 p.489; also quoted in R. Hamowy 1978 pp.296-297n.).

[3] As in the example Hayek uses, where one's hand is guided by physical force to sign (F.A. Hayek 1960 p.133).

[4] Is it not the great advantage of the "free" market society anymore, that it benefits the majority of individuals in the majority of cases?

preservation of what I most value" the conditions he exacts for rendering them are not coercive (F.A. Hayek 1960 p.136). Hamowy attacks these criteria persuasively. His conclusion is that no theory of objective individual freedom can ever be based on such inherently subjective criteria (R. Hamowy 1978 pp.288-289). Hamowy (like Gray) accuses Hayek of lapsing into a positive notion of freedom in the end. His "philosophical muddle" drives him away from his initial strictly negative notion of liberty to an essentially positive one: I am unfree (coerced) to the extent that I am deliberately denied those things which I find preserve what I most value. Thus, my freedom may require that others be forced to act in a particular way (R. Hamowy 1978 p.289).

The inadequacy of Hayek's notion of freedom is further extended by his effort to establish a link between the rule of law (taken as general abstract rules) and individual liberty. Hamowy points out Hayek's intention of equating the rule of law with the laws of nature, and the implications that such equation has. Again his critique persuasively disposes of Hayek's claim that in so far as one knows in advance what one is not allowed to do, one need never place one's self in a position where one will be coerced, but it does so on pragmatist grounds. That is, there is no reference either to the inner incoherence that emerges from such a position or to the real purpose of Hayek's argument. Hamowy also presents a detailed critique of Hayek's theory of the rule of law. His intention is to show the inadequacy of all the Hayekian criteria as safeguards of a liberal society[1]. Hamowy's conclusion is that "Hayek's preoccupation with the *formal* structure of law has led him to disregard the substantive limitations on law without which personal liberty cannot be ensured. In the absence of additional substantive limitations which go beyond the satisfaction of mere structural requirements, the law can become an instrument of government power as repressive as any which would exist under an arbitrary despotism." (R. Hamowy 1978 p.296).

[1] See part II, critique of the universalizability test.

6. The Rule of Law and the Free Market in Baumgarth's Critique

The libertarian critique - as differentiated from the more liberal accounts of Forsyth and Wilhelm - is also represented by W.P. Baumgarth. It is worth noticing (although, perhaps, not surprising) that the common elements between the two approaches are much more important than their differences. In fact, it seems that the only domain of substantial difference does not lie in the theoretical field - hence, the apparent similarity of the grounds on which they attack Hayek theoretically - but, rather, in the political suggestions that they present as more plausible alternatives to Hayek's political theory - notably the role of the state in contemporary societies.

Baumgarth's critical presentation of Hayek's rule of law doctrine suggests an apparent unity in Hayek's theory. Much in the sense that Gray later implies, Baumgarth concedes that "(...) Hayek's formulation of the principles of the "rule of law" serves as a synthesis of his notions about man, mind and society, as an application of his epistemological views of the limitations of human intellect, of his modified rule utilitarianism, and of his notions of spontaneous order in society to the problem of the nature and limits of the liberal state." (W.P. Baumgarth 1978 p.11). In short, the "rule of law" doctrine is thought to constitute the upshot of Hayek's thought in social and political philosophy. Moreover, for Baumgarth (as for a number of scholars), there is little doubt that Hayek is, after all, an utilitarian. Seeing the rule of law under that perspective, Baumgarth categorically states that "(...) general rules are necessary for important considerations of social utility;" (W.P. Baumgarth 1978 p.14). Baumgarth is primarily interested in examining the legitimacy of the rule of law. Hayek attempts to legitimize the rule of law by an appeal to its general and impersonal character. That is, because the rule of law is not designed by any individual, it can not be said to be just or unjust. Even if we try to surpass the justice-neutral concept of the rule of law, Baumgarth says, even if we take justice as fairness in a Rawlsian sense, Hayek's answer would be: "Once we have agreed to play the game and profited from its results, it is a moral obligation on us to abide by the rules even if they turn against us" (F.A. Hayek 1967 pp.174-175). Baumgarth further contends that "Hayek's attempt to show that the market alone is the compatible economic corollary of the rule of law, which he takes to be fair, emerges as the

vindication of the fairness of the market itself." (W.P. Baumgarth 1978 p.16). This remark is of capital importance in that it places the "market" at the centre of Hayek's theory[1]. In that sense the rule of law - partly contrary to Baumgarth's own opening remarks - is not the principal category in Hayek's political philosophy any longer. Rather it emerges as the catalyst that is used in order to prove the moral status of the actual primary category - the market. Viewed in this light, Hayek's theory comes much closer to what may be considered as the leading position of this thesis - that is, that it constitutes a dynamic apology for capitalism. Society does not become "free" or ""Great" just because it conforms to *a* rule of law. A liberal society, in Hayek's view, is the one which conforms to the (very concrete and precise) demands of the market as expressed abstractly, on the level of ideology, in the rule of law. Hence, the "Greatness" of the liberal society is not actually derived from the abstractness or generality of its laws but from their conformity with the concrete demands of the market.

This, of course, is not Baumgarth's line of argument although he comes close to it when he contrasts Hayek with the old Whigs. The latter, he says, were advocates of tradition *per se*. Hayek, on the contrary "(...) is based upon more of rationalist than historicist presuppositions; that is to say, [he] is more interested in principles than in tradition, *particularly when that tradition can easily become a conveyor of anti-liberal institutions*. Not commitment to tradition alone, but defence of traditional institutions of liberty seems to characterize Hayek's insistence on the "rule of law"." (W.P. Baumgarth 1978 p.20)[2].

One secondary remark can be made here, with reference to Hayek's attempt to present his version of justice-as-fairness. He says, and Baumgarth uncritically accepts it, that the results of the game should be tolerated *because* the actors have given their *a priori* agreement to the rules of the game. Now, this (Lockean or Nozickian) argument could be acceptable in the context of different theories (for example, contractarian theories) but it seems quite problematic in Hayek's theory.

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[1] It is not implied that these are (or even could have been) the conclusions of Baumgarth himself. It is just contested that Baumgarth's critical analysis clarifies unintentionally the Hayekian categories.

[2] Emphasis added.

After all, Hayek was at pains to establish the point that each and every decision we make is determined by the whole bulk of the traditions that we inherit, that we can never acquire a transcendental critical standpoint, as far as the decisions in our lives are concerned, and that the debate on the freedom of the will is actually a debate over a "phantom-problem". In what sense, then, can it be argued that the "fairness" of the outcomes of the social game is rooted in our initial agreement to play it by certain rules since we never had a real choice? Furthermore, arguments like the above contribute to the ambiguity of the Hayekian position[1], as far as the role that the spontaneous orders play in his theory is concerned. It is obvious that if we are to take the evolutionary nature of spontaneous orders as an objective necessity (as Gray suggests) the attempt to legitimize market values according to their fairness is not valid. And again, if our agreement on the rules of the game is determinative enough to legitimize market outcomes, then the process of spontaneous evolution of orders is empty of meaning.

Baumgarth's critique basically follows the line of three of the most influential of Hayek's critics - namely, R. Hamowy, B. Leoni and J.W.N. Watkins[2]. In the dual problem of freedom and coercion Baumgarth agrees with Hamowy on the inadequacy of the Hayekian definitions. Particularly with respect to Hayek's curious definition of the legislation that falls under the rule of law principle, Baumgarth notes that laws of nature are not the same as laws of state. Hayek pushes this equation as far as to argue that general, abstract rules are like natural obstacles that affect one's plans. Therefore, if one knows beforehand what is allowed to one, then one need not place oneself in a position where one will be coerced; hence, one can always remain free (F.A. Hayek 1960 p.142). But, Baumgarth observes, the laws of state can be changed while the laws of nature cannot; furthermore, if the analogy was correct, then one would choose to disobey those rules of the state which would not suit one's plans whenever one could get away with it, just as one tries to avoid natural calamities. This conduct can hardly be considered as a stable foundation of a free (even in the Hayekian sense) society. Baumgarth's argument again illustrates Hayek's intention

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[1] Briefly mentioned already and discussed in more detail in part II.

[2] As cited *supra.*

of equating "impersonal social forces and general civil laws to noncoercive forces and laws of nature". The matter, however, is not pushed any further; it is simply taken as one of the many cases where Hayek produces an inadequate definition. Dismissing Hayek on such grounds, however, seems quite simplistic. The open question, however, is what are the conclusions emerging from such an account of law and legislation had the Hayekian argument been accepted. Both in part II and in part III it will be argued that what Hayek is ultimately after is an equation of the existing socio-economic formation in all its aspects with a superhuman "natural" objectivity. Once we accept his supporting arguments, capitalism emerges as an all-powerful eternal social organization and, what is more, it acquires a place essentially beyond the reach of human intervention.

Baumgarth's critique forms a part of the mainstream[1] which claims that no social theory can exist in the absence of an *a priori* theory of rights. As a critique of the formalist and merely consequentialist account of the rule of law that Hayek produces, Baumgarth says: "The real question is rather, is the particular act of coercion, whether by the state or the individual, just? That is to say, an independent ethical criterion seems necessary in judging the status of coercion." (W.P. Baumgarth 1978 p.17). The whole of Baumgarth's critique rests on this particular thesis. In that sense[2], he remarks that it is the content of the rule, as well as of the command, that makes it just or unjust for the libertarian, rather than any formalist characteristic. Likewise, as far as legitimate state intervention is concerned, Baumgarth comments that the deficiency of Hayek's confusing arguments is due to his denial of a theory of human rights. In a way that will be adopted by Gray in his early writings on Hayek and others, he says: "Although admitting that interference by the state into the envisioned private sphere, (...), is undesirably coercive, Hayek's conceptual dependency of rights upon the principle of the rule of law deprives the former of any use as an independent criterion of judging laws." (W.P. Baumgarth 1978 pp.18-19). At the same time, Baumgarth notes that not even Hayek can remain consistent to his account of the rule of law when he deals with actual social and political problems.

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[1] Common to liberals and libertarians, at least in Britain and the US.

[2] And by doing so he is adopting a rather dangerous, for his standards, essentialist outlook.

In particular, Hayek says that "the pleasure or pain caused by the knowledge of other people's actions should never be regarded as a legitimate cause of coercion" (F.A. Hayek 1967 p.145) and consequently, he denies the legitimacy of state intervention in such fields as religious practices. Baumgarth notes that "(...) such a judgement cannot be derived from the formulation of the "rule of law" notion, but only from some notion of substantive rights." (W.P. Baumgarth 1978 p.19). The critique that Hamowy (and Leoni) has launched against the Hayekian test of universalizability holds good in Baumgarth's opinion too. Thus, he concludes that "What alone makes for long-run certitude, as also for a check upon power, is some notion of, some provision for substantive rights." (W.P. Baumgarth 1978 p.25).

7. The "Continental" Liberal Critique of the Rule of Law: Aron's Freedom of the Will

The "continental" liberal link is provided by R. Aron's critical presentation[1]. Aron, contrary to Hamowy and Gray, classifies the Hayekian definition of freedom strictly in the negative tradition. However, like Hamowy, he thinks that Hayek's definition is somehow too wide (R. Aron 1961 p.203). He also thinks that Hayek's account suffers from an arbitrary attempt to provide an objective content to liberty. "Hayek wanted to define liberty by the absence of coercion and coercion as an objectively identifiable situation." (R. Aron 1961 p.204, my translation). Aron then, like Hamowy, thinks that this is impossible in the context of Hayek's theory. In so far as Hayek is trying to imply any notion of objectivity - either by the reference to the rule of law or by any objective criteria of coercion - his effort is foredoomed. On the one hand, his criteria are scattered under scrutiny; on the other hand, whenever he tries to refer to external criteria he generates inconsistencies. Aron, again like Hamowy, points out that if Hayek's definition of coercion is taken as such most of the actions between individuals in society would have to be considered as coercive. However, the conclusion reached, although apparently similar to Hamowy's, actually differs essentially. Hamowy says that an independent pre-existing - "objective", in the

[1] R. Aron 1961 pp.199-218

sense of universal - theory of rights is a necessary and sufficient condition for the definition of liberty. Aron says, "(...) it is not essential any more whether the individual chooses his ends or means or not; what is essential is that he has to obey to an order that he does not approve of and that he judges this order as being contrary to his rights or to fairness." (R. Aron 1961 p.204, my translation). This argument is clearly the same as far as its negative side is concerned - that is, it criticizes Hayek exactly for the same reasons as Hamowy. It is also close to Hamowy's in that it takes conformity with rights as the ultimate criterion of liberty. But, whereas for Hamowy the stress was on the existence of an independent and pre-existing *theory* of rights (implying a certain "objectivity"), for Aron it is the *individual judgement* on whether one's own rights are suppressed or not that becomes the determinative factor. The result is that Hamowy criticizes Hayek for the unavoidable subjectivism that his criteria bring about, while Aron criticizes him for an attempt at objectivism in his premises. Aron, thus, concludes that if we have to take into account the subjective element in the definition of coercion, we must also do so in the definition of freedom and it is precisely for this reason that Hayek's appeal to general, permanent rules cannot guarantee liberty.

In further criticizing the notion of freedom under the rule of law, Aron points out that Hayek is ambiguous as to the precise relation between rules of law and liberty. On the one hand, he admits that, at times, even general rules might become coercive. On the other, he does not say that, in fact, they do. Aron, in the spirit of J.W.N. Watkins and Hamowy, argues here that Hayek's ambiguity is due to a distinction, the retainment of which is vital to the validity of his theory - that between laws and commands. Rather than using the modest expression that Hamowy adopts from Watkins - namely, that Hayek is "overimpressed by the logical distinction between a positive command and a prohibition" (R. Hamowy 1978 p.290) - Aron explicitly states that if Hayek were to admit that a general rule could in fact express concrete human will his whole theory would crumble. Aron's critique of the criteria of a rule of law is much in the same vein as Hamowy's, Leoni's and Watkins'. The conclusion, however, is again different. Instead of an appeal to a theory of rights, Aron, obviously influenced by his "continental rationalist" tradition, argues, "It is not the minority or the majority that will find the solution [that is, in Hayekian terms,

decide whether a certain rule is a "rule of law" or not], (...), but the men of reason belonging to both." (R. Aron 1961 p.208, my translation). This objection implies more than what it explicitly argues for. Aron's point is profoundly different, and indeed, opposed to that of Hayek's. The appeal to human reason as an ultimate criterion of morality constitutes the evil which Hayek is trying to exorcise throughout his theory. It also differentiates Aron from the British and American libertarian critics of Hayek, who try to establish an "objective" transcendental point of reference in the form of a theory of rights. The upshot of Aron's argument is that *there cannot be any objective criterion* of non discrimination and non privilege any more than there can be any objective criterion of coercion. The impossibility of finding an objective criterion of coercion and, consequently, of liberty becomes apparent, in Aron's view, from Hayek's own account of the protected private sphere. Aron does not deny the vital, for the liberal theory, necessity of the existence of a protected sphere of autonomous individual activity. But, contrary to J.S. Mill, he agrees with Hayek that this sphere is delimited primarily according to historical circumstances. But if the content of the private sphere, asks Aron, is historically variable, how can we have an eternal "objective" definition of non-coercion? In his view, a theory of liberty can only be valid if the historically variable element becomes the overall determinative criterion of liberty. The rest of the Hayekian criteria (non-discrimination, generality), thus, will acquire a significance only if taken as complementary parts of this basic premise: as a whole they will be pointing towards an ideal - that of the liberal society. But the content of that society will not be fixed. For example, the ideal will prescribe a reduction to the minimum of non-discrimination, but the content of discrimination will not be objective. It will vary according to historical circumstances[1]. In that sense, Hayek's theory is only valid, according to Aron, as long as it describes an ideal

[1] Notice that, in terms of methodology, this is also Gray's suggestion (J. Gray 1986a). Gray insists in taking all the criteria together, as a corpus, contrary to Hamowy's methodological approach. I do not see how this approach can simplify things. In the case of Aron it seems quite straight-forward that once the historical element is established, not only the content of the other criteria but also their relation to the primary and, consequently, their relative weight, will vary considerably. Gray's view does not seem to offer any essential support to the Hayekian thesis; on the contrary it seems to confuse it further rather than clarify it. His approach is discussed at length in part II.

for our society[1]. But its philosophical foundations are fragile. It cannot be used as an analytical theory of human history and it cannot justify liberalism in its historical dimension. The problem of Hayek's theory, then, is that to the extent that it is taken as a general philosophy it tends to presuppose too many things. "Before society can be free, it must exist" (R. Aron 1961 p.215, my translation); but the problem with Hayek is that he takes as granted a society where the individuals will be "educated" in the theory and practice of liberalism. "Hayek's philosophy takes for granted the outcomes that the philosophers of the past considered as the primary objectives of political action." (R. Aron 1961 p.215, my translation). It should be noted that Aron, like his British and American fellow-travelers, stops his critique at this point. Hayek's theory is, thus, considered as an ambitious effort generated by noble intentions which has unfortunately failed due to "logical" mistakes. There is again no reference to what Hayek has actually tried to achieve or to the implications that even a partial application of his theory might have[2]. What, then was the cardinal mistake of Hayek's, according to Aron? "Perhaps the final reason why I hold that the philosophy elaborated by Hayek in order to ground his liberalism is insufficient, is that he refuses to take into consideration the problem of internal liberty." (R. Aron 1961 p.213, my translation). This position tends to bridge the gap left after the dismissal of Hayek's objective notion of coercion. The objective definition of coercion is impossible "(...) from the moment that states of consciousness are taken into account, liberty does not only depend on the non-interference of others in one's private sphere." (R. Aron 1961 p. 213, my translation). Liberty, then, according to Aron, cannot be conceived separately from the liberty of the will or consciousness. There cannot be any objective definition of coercion since what counts is whether an individual feels coerced at a particular historical time. This situation will inevitably occur whenever an individual will not recognize the legitimacy and/or the rationality of state power. In a way quite similar to that of Forsyth, Aron argues that liberty should be defined according to the morality of individual conduct. "It is enough to oppose passions to

[1] Indeed, there seems to be an agreement among libertarians on that point.

[2] Aron was writing in 1961 when Hayek's theory was far from being politically influential, let alone applied.

reflections, or "animality" to consciousness to make (internal) liberty appear as the term of the effort by which the human animal climbs to humanity." (R. Aron 1961 p.214, my translation). Not that this definition does not have dangers; a coercive imposition of a moral uniformity might occur. But this is simply the only way; there can be no common values whatsoever (respect for a liberal society being the primary among them) if people are not somehow "educated" to accept and promote such values.

A comparison of Aron's critique with that already mentioned by British and American libertarians can now take a more comprehensive form. Aron and the libertarians, have the same overall approach to the Hayekian theory. They generally agree with it in terms of its political premises, but they think it is insufficient. Thus, according to Hamowy's critique, the overriding difficulties present in Hayek's theory are, first, a too narrow concept of liberty, linked to the rule of law rather than definitionally independent; second, the rule of law is conceived of as a sufficient rather than a (potentially) necessary condition of a free society. Compare with Aron: "But these two ideas [negative liberty and general rules rather than commands] are not sufficient either in constituting a philosophy of liberty or even, in our times, in determining the criteria delimiting a free society" (R. Aron 1961 p.217, my translation). Both approaches criticize Hayek precisely on the same aspects of his theory. But, surprisingly enough, they reach different - if not opposite - conclusions. In the libertarian critique, Hayek is thought to be excessively subjectivist, even relativist. His formalism is doomed to relativism because of the lack of an "objective" pre-existing and separately developed, determinative theory of rights. In Aron's critique, however, Hayek's failure lies in his attempt to establish "objective" criteria of freedom. It is this "objectivism" that Aron disavows in favor of a subjectivist (and necessarily relativistic, it would seem) freedom of consciousness. This disparity of views is also apparent in the way the two trends see Hayek's "scientific" evolutionism. In the libertarian version, there is a notable lack of reference to the problems emerging from this idea. Rights, instead, are taken as the determinative category of political philosophy. In Aron, on the contrary, the evolutionist element of Hayek's theory, simplified as a mere historical delimitation of the sphere of individual freedom, emerges as the determinative frame, within which the freedom of consciousness will

flourish in each historical moment. Not only is any appeal to a rights theory left out, but the very prospect of formulating an "objective" theory of liberty is negated by definition.

What is the common denominator of the two critiques? They both think it necessary for a liberal political philosophy to have a transcendental ideological foundation. By "transcendental" is meant a theory that goes beyond the actual social relations; a theory that does not depend on historical social conditions, but rather determines them. That is the function of a theory of rights (whether it is a natural rights theory, or a more sophisticated modern version) in the libertarian trend of thought. That, also, is the function of the "freedom of consciousness" that Aron[1] suggests. Hayek refuses (even inconsistently) to base his theory on any transcendental category. He denies a rights based political philosophy on the grounds of its being non-sensial. Social evolution, alone, will determine what the rights of the individuals are. He also denies the "freedom of the will" as a metaphysical problem. His theory, therefore, becomes a relativist "historicist" (justificationist) account of human society. The important point, however, as it emerges both from the critiques launched against Hayek, and from his failure consistently to follow his own line of argument to the end, is that a transcendental foundation of liberalism is a *sine qua non* if the theory is to retain some coherence.

But, is Hayek totally innocent of any attempt to transcend the limits set forward by his own theory? The problem has been pointed out by many critics but Aron[2] presents it in the clearest way. There is an equation that takes a central place in Hayek's theory, says Aron; that of the rules of law with the rules of nature. The rule of law, like the rule of nature, prescribes what an individual can and cannot do[3]. In that sense, it prescribes the fixed conditions in which the individuals must adapt their lives and conducts. Many objections are presented by almost all of Hayek's critics to this equation. Aron, faithful to his subjectivist approach, says that the

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[1] Similarly to many British liberals, like Forsyth.

[2] Along, perhaps, with J.W.N. Watkins.

[3] Hayek would certainly object to that; but see critiques attributing to his theory an essentially positive content of the concept of liberty (cited *supra* and in part II).

equation does not hold because actual individuals do not feel it as valid. Baumgarth (W.P. Baumgarth 1978), following Watkins, says that the two classes of rules are not the same because they are not created in the same way. What is more, if we are to equate them, no moral blame should fall on those who try to escape unfavorable rules of law. Aron, stresses that the rules of law can be followed or transgressed at will while the rules of nature obviously cannot. They all agree that the rule of law can be changed while natural rules cannot.

There are two important points on which these critiques fall short. Firstly, the law of nature equation serves for Hayek as the transcendental legitimation of his political philosophy in the same way that an "independent" theory of rights of the abstract individual, or the "freedom of the will" legitimizes liberal political philosophy. Thus, Gray notices that "(...) [for Hayek] law occupies a pre-existing domain of objectivity, fully autonomous and independent of human decisions" (J. Gray 1986a p.68). The above mentioned critiques, starting from essentially the same trend of thought as Hayek's, fail to recognize the functional role of this equation. Their arguments are limited to the arbitrariness of Hayek's theoretical conclusions. But they fail to realize the position that these conclusions occupy in the structure of the Hayekian system as well as their importance for the validity of the system itself. That is not to suggest that the critiques presented above are non-sensical. It is only to point out that they are rather limited. They focus only to the problems generated by the adoption of Hayek's transcendental solution but ignore the question: is it legitimate to use transcendental solutions at all? This is due to the fact that they start essentially from the same trend of thought in which the transcendental foundation of political philosophy is taken for granted. Secondly, and related to the first point, these critiques fail to account for the political outcomes of this equation[1]. Instead they are exhausted in pointing out the (numerous) logical inconsistencies that result from it. This failure is mainly due to the essentially identical major political premises of the critics. In that sense, for example, no scholar finds anything wrong either in the position that capitalism is a morally superior socio-economic formation, or that it is just as eternal and unalterable in its basic principles as the laws of nature. The same

[1] See parts II and III for a more detailed critique.

applies to many secondary positions concerning private property, social inequality etc.. It is in vain that one searches for an argument stating that the equation actually functions as the theoretical sanctification of current social relations, and thus, works against those who are worse off. It seems that the only thing that it works against is the time-honored "freedom of the will" and the equally time-honored "rights" of the abstract individual.

8. The Civil and the Political: Normativism and Decisionism in Cristi's Critique

A very different approach to the Hayekian principle of the rule of law is offered by F.R. Cristi[1]. Cristi compares Hayek's ideal of the rule of law to the "Mephisto of the pre-Hitler era", Carl Schmitt. The argument focuses on the relation of liberalism to democracy and the concept of political power in the theories of the two authors. The conclusion is that the distance between Hayek and Schmitt (a distance that the former has tried hard to establish) is in fact less than both Hayek and most of his scholars believe[2]. The implications of this conclusion are of major importance for the argument presented in this thesis - that is, that Hayek is primarily an advocate of capitalism on political grounds and, hence, his unhesitating defence of a social organization that can hardly pass as purely philosophically founded liberalism.

Cristi's starting point is that Schmitt's main target was not liberalism but democracy. It should be noted that this conclusion is contrary to Schmitt's own self-understanding. He thought liberalism to be his primary ideological adversary. This is also Hayek's view. Cristi's research, nevertheless, convincingly shows that Schmitt was actually attacking the *democratic* component of 19th century liberalism (F.R. Cristi 1984 p.529). This point seems to apply in Hayek's case as well. Hayek apparently fights for liberalism. What he identifies as the content of anti-liberalism, however, tends to be identical with democracy in the sense of popular sovereignty.

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[1] F.R. Cristi 1984 pp.521-535.

[2] Some unexpected support for Cristi's argument can be derived from N. O' Sullivan's view of Schmitt which, far from contrasting him with the neoliberal social theory, considers him as "the greatest twentieth century theorist of social philosophy" (N. O' Sullivan 1989 p.5).

In that sense, his attacks are not directed against, say, socialism as such, but against every political application of democracy.

At the same time, Schmitt's contribution to the Nazi ideology remains undeniable. How, then, is this apparent contradiction - to the eyes of the liberals - to be surpassed? How can a theory be pro-fascist and, at the same time, not anti-liberal? Cristi, here, follows the Marxist tradition in indicating that liberalism, in its classical formulations, already contains the contradictions that may lead to fascism. Much in the spirit of Arblaster's account of the limits of liberalism[1], Cristi stresses that what Schmitt "actually objected to was liberalism's inability to preserve its main body of doctrine free from democratic contamination." (F.R. Cristi 1984 p.524). The key to the understanding of Cristi's analysis lies in the fundamental distinction, inherent in liberal ideology in all its versions, between civil society and the state. The notion of the rule of law indicates the upshot of this distinction and thus becomes the primary category of liberal legal and political theory. It is through this distinction, expressed in the form of the rule of law, that civil society becomes a separate sphere that presents its (legitimate) demands for the least possible interference from the state. At the same time, this "least possible" formulation indicates the fact that for the vast majority of liberals the state remains a necessary evil[2]. Hayek is no exception to this rule[3]. Indeed, a "free" society is one which can achieve an objective encirclement of authority. Liberalism, then, is not incompatible with coercion provided that the authorities that administer society allow all individuals equally to foresee their course of action.

In the initial distinction between state and civil society, liberalism ascribed to the latter a protected domain of individual rights. The purpose of the rule of law was to eliminate any unwanted interference in this sphere. At the same time this distinction also prescribed the state a secured domain - that of the monopoly of the

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[1] And against Hayek's and most liberals account of liberalism as the exact opposite of "totalitarianism", both in its "red" and in its "black" version.

[2] For a penetrating analysis of the state-society relation in liberal theory and, in fact, in capitalist society, see J. Hoffman 1988.

[3] This view is disputed in part III. The argument presented there holds that for a considerable part of New Right theorists the state is not an evil at all and in fact is quite desirable.

political power. Conceived under this scheme, the state was assured independence and autonomy. Its function was to prevent the politicization of civil society - a function that would guarantee its own existence. The problem, however, is that the social changes of the 19th century fatally compromised the authority of that state. Democracy, says Cristi, demands the politicization of civil society and thus results in the weakening of the state as a monopolizing entity of political power. This was what characterized the historic compromise between liberalism and democracy. This, however, was an unstable compromise not only in the eyes of Schmitt but in Hayek's eyes as well[1]. It was against that state that Schmitt had turned. Not against the autonomous state of liberalism that monopolized political power, but against the democratic weakening of that state as this was expressed in the Weimar republic.

It is interesting to notice that Schmitt, who was the one who introduced the notion of "total state"[2] gave a different connotation to it than did Hayek or, for that matter, the majority of English-speaking liberals. The distinction between totalitarian and authoritarian, according to which liberalism is taken as compatible with the latter but not with the former (F.A. Hayek 1967 p.161), was not his idea of totalitarianism. On the contrary, his distinction between qualitative and quantitative totalitarianism turned authoritarianism into a variant of totalitarianism[3]. Thus, it was against the "weak", democratic state and against its most prominent institution, the parliament, that Schmitt fought. The parliament, according to Schmitt, was the instrument by which civil society was trying to control the state and deprive it of its autonomy.

Schmitt's solution to this problem was, of course, the *Reichspraesident*. This is the point of confrontation with Hayek. Hayek developed his theory, according to Cristi, as an attempt to defend liberalism from Schmitt's views. The apparently normative and procedural content of his rule of law can thus be seen as the exact

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[1] It seems that the identification of liberalism with democracy tends to loose the "self-evident" character that the liberals themselves used to imply. Rather in the manner of classical liberalism of the 18th century (notably in its most conservative, British version) the New Right openly expresses its distrust and even hostility to democracy. For a classical critique see the works of H. Laski 1924 (esp. chapters I and II), 1951 and C.B. Macpherson 1977 and 1962. For a contemporary account J. Hoffman 1988, see also A. Arblaster 1984.

[2] Interpreted as "totalitarian" in English.

[3] See F.R. Cristi (1984 pp.526-527n.) for the full argument.

opposite[1] of Schmitt's decisionism. The value of law, according to Hayek, depends on its procedural origin, as well as on the self-evaluated norms. For Schmitt, on the contrary, it is the existential quality of a will that determines the validity of the norms. But, contrary to the view of Hayek, who bases all his critique on the personified form of Schmitt's proposition, as well as on the decisionist element which he sees as determinative in this scheme, Cristi argues that the institution of the *Reichspraesident* should not be understood in that way only. Schmitt understood, notably in his later writings, that to base the whole of authority on decisionism was to build on fragile foundations. "Decisionism now appeared to him as one-sided as normativism in that it lacked the objectivity needed to legitimate a stable framework for continuous political action." (F.R. Cristi 1984 p.529). The *Reichspraesident*, in that sense, constitutes the basis for both normativism and decisionism because it actually transcends them both; it thus becomes somehow self-evaluating in that it embodies the objective framework that could mediate between state and civil society.

Hayek accuses Schmitt of extreme decisionism. This allows him to present his conception of order, a system based on abstract relations, as the diametrically opposed conception. In reality however, the transcendental essence of the *Reichspraesident* has much in common with the transcendental essence of Hayek's rule of law. The difference between the two theorists is further diminished when certain decisionist elements, present in Hayek's theory, are taken into account. Hayek is in agreement with Schmitt that the state and civil society are distinct. What is more, he takes the state's independence as an undisputed fact, thus arguing that a liberal order is compatible with authoritarianism. Nevertheless, he seems explicitly opposed to central planning and proposes a negative role for the state. This indicates that he takes civil society's ability for self-regulation for granted[2] and confirms the dethronement of politics from it. However, the negative status of the state is disputable[3]. After all, it is the state that positively restricts itself to negative action. The depoliticization of

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[1] A "mirror-image", in Cristi's words.

[2] Hence, the frequent critique that Hayek's theory implicitly presupposes a contemporary liberal society.

[3] This has already been mentioned in the libertarian critiques on that matter.

civil society, thus, becomes actually the active preservation of the monopoly of political power by the state. This leads to an inability of civil society to decide under which conditions the Hayekian spontaneous social order becomes imperilled and requires positive intervention. The knowledge of that situation as well as the decision to alter it - being political in nature - lie beyond the powers of civil society[1]. Seen in this perspective, Hayek's admittance that the power to declare a state of emergency belongs to the state, does not appear to be so far removed from Schmitt's decisionism.

This decisionism becomes even more determinative when one conceives of the rule of law as a concrete framework of social and political organization. Behind the generality and abstractness that objectively delimits the institutions of government, lies the actual decision to abide by such a rule. This decision finds its motivation not in the abstract realm of law, but in the concrete social relations of civil society. That the rule of law is compatible with non-democratic systems has been powerfully demonstrated even by libertarian critics[2]. What has not been stressed by libertarians, however, is stressed by Hayek himself when he attacks the idea of democracy insofar as it might be extended further than some purely formalist methods of governing. Democracy is acceptable if it conforms to the rule of law in regarding all individuals as equal, however unequal they may in reality be. Despite Hayek's attempts to show that the order we live in is not the order of any rational design and that its significance may be different from the intentions of its creators, the fact remains that this order, taken in each historical moment, is not abstract, but represents a particular class structure. The fact that Hayek is at pains to demonstrate that this class structure is "natural", that is, the product of "selective elimination" and the result of the "survival of the fittest", is apparent in the (attempted) equation of the rule of law with natural laws[3]. In Hayek, as in Hume, social stratification is the product of chance and circumstance. Hence, the description of the ideal society as one where one would like to place one's children if their place was to be decided by lot. In his theory the

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[1] See also critique of the rule of law as expressed through Hayek's "Model Constitution", in part III.

[2] Apart from R. Hamowy (as cited above), see also J. Raz 1977.

[3] As Watkins, Aron, Gray have repeatedly demonstrated, for example.

sovereignty of the people has been replaced by the sovereignty of "nature". Cristi rightfully comments that in Hayek's theory "nature teaches us to accept the solidarity of subservience." (F.R. Cristi 1984 p.534).

CONCLUSION PART I

The critical presentation of some parts of the literature on Hayek's thought has had a twofold purpose. It firstly sought to present the issues on which the relevant debate has been developing over the past fifty years. Secondly, it tried to locate the limits of these critiques. As far as the first point is concerned, it would seem that Hayek's theory has indeed been widely criticized. There is hardly any part of it that has not fallen under intense scrutiny and usually, in the end, been more or less rejected. The one certain conclusion, then, is that Hayek's thought is not only liable to criticism but indeed vulnerable. Throughout the years scholars have developed an ability to discover new points of incoherence, new sources of inconsistency, new contradictions. The question, however, seems to be why have all these scholars occupied themselves with Hayek's theory in the first place? The question becomes all the more perplexing in view of the fact that Hayek's theory had been fully developed and criticized by the beginning of the 1960s, that is, long before it attracted the great flow of criticism. How then can a theory with so many obvious weaknesses become the centre of an intense scholarly debate for such a long period?

The answer to that question brings forward the second aim of this part. For, it would seem logical to assume that for all their originality and insight most of these critiques have failed to meet Hayek's challenge conclusively. Notwithstanding this deductive assumption most of the arguments presented above clearly point towards actual problems in Hayek's thought. It is not, then, on the inaccuracy of the critiques themselves that the problem rests, for Hayek's theory is indeed inconsistent and problematic in very many ways.

It will be argued that its strength does not lie in its inner coherence but in its political dimension. It is the aim of Hayek's theory and indeed the function of his system in political terms that makes it both most appealing and particularly challenging. In that sense, the inner problems of the theory, far from being of secondary importance, demonstrate the necessary limitations of a theoretical account that seeks primarily to defend the existing social organization.

The same point can be derived negatively from the "incompleteness" of the

views of his critics. It must be clear by now that most of the critiques presented thus far belong to the liberal/libertarian and conservative camp, that is to the wider procapitalist area. The same method will be retained throughout the two remaining parts. What is sought is to try further to establish the point that these critiques are not incomplete because of some personal inadequacy of their authors but because it is hardly possible to grasp the political function and significance of Hayek's thought without denying the very premises of capitalism which are also the premises of the critics themselves. It is precisely that social and political dimension of the Hayekian theory which most of his critics fail to recognize.

This further step, that is the link between the inner problems and the political dimension of the theory, will be attempted in the course of the two following parts.

PART II: THE PHILOSOPHICAL FOUNDATIONS OF HAYEK'S THEORY

The importance of epistemological issues in Hayek's thought cannot be overemphasized. Hayek himself is frequently at pains to establish the connection between his philosophical premises and his social theory. The argument advanced in this part does not question the importance of that issue in the first place. On the contrary it seeks to indicate that its importance is to be found not only in the cases where there exists such a connection but also in those where there is an apparent lack of it. In other words, it is the parts of Hayek's philosophy that are maintained and used as premises in his social theory, as well as the parts that simply disappear or even contradict these premises, that express the overall importance of the relation between philosophy and social theory. Obviously, this objective presupposes a close examination of Hayek's own statement of his philosophical principles. It is under that same perspective that the relation of his thought to that of his intellectual ancestors is examined. The purpose of the argument then is not simply to characterize him as, say, "idealist" or "materialist", "positivist" or "empiricist" (although the linkage with such trends of thought largely occupies the first section); far less is to attribute to him the label of "Kantian" or "Humean". Rather what is attempted is to locate the elements of these theoretical traditions that Hayek uses in his theory and in what way.

SECTION A: The Theory of Mind: Ontology and Epistemology

1. The "Inadequacy" of the "Old" Philosophy

In the opening of his book *The Sensory Order*, Hayek poses the question: what is mind? He then dismisses the possibility of treating the problem within the limits of traditional philosophy[1] because the difficulty is "in deciding what part of our knowledge can properly be described as knowledge of mental events as distinguished from our knowledge of physical events" (F.A. Hayek 1952a p.1). Hayek, then, does not intend to refer his theory to some set of ontological premises. On the contrary,

[1] i.e. within the limits of the nature-mind relation.

he seems to focus on the epistemological side of the problem exclusively. His distrust towards ontology can also be asserted by his attachment to positivism and Mach: "(...) for the young student interested in philosophy (...) who felt a distaste for orthodox thought, Mach was the only alternative" (F.A. Hayek 1952a p.VIII). In the course of dismissing the way the "old" philosophy put the problem, Hayek sketches out his own approach. "We shall have established a "correspondence" between particular physiological events and particular mental events if we succeed in showing that there can exist a system of relations between these physiological events and other physiological events which is identical with the system of relations existing between the corresponding mental events and other mental events" (F.A. Hayek 1952a p.2).

It is not quite clear in what sense this restatement of the epistemological problem is different from that of "traditional" philosophy. In the first place, this approach essentially presupposes the dualism of mind and nature (mental as distinct from the physical) ontologically. Secondly the term "event", which here acquires the role of the common denominator of the two prevailing "orders", is left almost wholly unexplained. The analytical validity of the term becomes even more problematic in the light of the difficulties that Hayek himself has raised against "traditional" philosophy. For, it would seem, the task that he puts to himself now - namely, to establish a "correspondence" between mental and physical events - presupposes the ability clearly to distinguish between them. This passage already reveals the relation of Hayek's approach to that of Machist empiricism. Furthermore, the very way of posing the problem is quite revealing. Hayek wants to "prove" that there exists a relation between mental and physical events. In order to do so he presupposes the existence of two category-orders. These orders do not acquire any clear ontological significance in Hayek's theory. Hayek does not address this problem head on, but he does give an indirect answer. If we can prove that there are two orders of events, mental and physical, Hayek says, then we will have to assume the existence of an external world (F.A. Hayek 1952a p.173) concerning the nature of which we can get no information through the mental order. The external world is not a necessary presupposition according to this approach but only a "logical" assumption - i.e. a consequence of the existence of the mental world. The conclusion that the mental world is in fact an independently existing determinative factor according to which and

through which everything else exists, becomes thus, for Hayek, the necessary starting point. We see here both of the component parts of Hayek's philosophy. The mental is prior to the material. "Mental" is meant in a subjective individualist[1] way. This is subjective idealism. But even so our mental world cannot give us any positive information about the external world. This is agnosticism.

The way Hayek proposes to approach the problem of the mental-physical relation is by examining what he calls the order of the sensory qualities. It must be kept in mind that Hayek does not intend to give any definition of the nature of mind[2]. Hayek emphasizes : "It seems that a question like "what is X?" has meaning only within a given order, and that within this limit it must always refer to the relation of one particular event to other events belonging in the same order" (F.A. Hayek 1952a pp.4-5). In that sense, "an answer to the question of what determines the order of sensory qualities constitutes an answer to all questions which can be meaningfully asked about the "nature" or "origin" of these qualities" (F.A. Hayek 1952a p.2). Notice that in putting the problem in this way, Hayek actually presupposes agnosticism almost by definition. The distinction between the two orders and the assertion that there cannot be any meaningful question concerning the nature of an "event" that transcends the limits of its own order leads to the *a priori* establishment of a sharp distinction between the mental and the physical. Thus, the "gap" between them - that is, the "gap" between the subject and the object, the cognitive process - appears to be unbridgeable by definition. The subject-object relation becomes an *a priori* impossibility.

Hayek starts from the separation of the world into two orders. This separation is based on the way our senses perceive different events. On the one hand, there is the phenomenon, namely the way senses "understand" certain stimuli and the way they "classify" them[3]. On the other hand, there is the physical, the way certain physical

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[1] In that sense, Hayek distances himself from any notion of "Universal Idea" or "Spirit", and thus, from any attempt at objective idealism.

[2] As M. Forsyth seems to imply (in M. Forsyth 1988 p.239).

[3]. Two very brief remarks here: Firstly, Hayek (along with Mach) does not believe that we understand and "classify" with our brain but with the complex framework of our nerves. In other words (continued...)

events are classified by science according to some characteristics of their own. "There exist now, in fact, at least two different orders in which we arrange or classify the objects of the world around us: one is the order of our sense experience in which events are classified according to their sensory properties (...); the other is an order which includes both these same and other events but which treats them as similar or different according to as, in conjunction with other events, they produce similar or different other external events" (F.A. Hayek 1952a p.3). This crucial division is accompanied by the warning that neither the phenomenal nor the physical order should be identified with or contrasted to what we call in ordinary language the "real" world. Many problems arise from this distinction. It remains completely obscure how "science" acquired this objective standpoint. As Gray notices, Hayek's whole theory strives to prove that this Aristotelian standpoint is fallacious[1]. To admit it would imply, firstly, that there are some objective events, secondly, that we can perceive them and, thirdly, that we can "classify" them in a way other than according to preconceived mental categories. Each and all of these assumptions are refuted in *The Sensory Order* (even objectivity is thought to derive its existence from formal rational systems). And although Hayek tries to deny that the classification of the second type is more "real" his success is very doubtful. For, either science classifies according to the properties and qualities of the "events", or it classifies according to the properties we attribute to them - that is, according to the preconceived formal systems - in which case there cannot be any real distinction between the mental and the physical and, in any case, the latter can never be classified according to the properties of the "events" themselves.

"It is indeed doubtful whether on the plane on which we must examine these problems the term "real" still has any clear meaning" (F.A. Hayek 1952a p.4). Hayek

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[3](...continued)
for Hayek as for Mach thinking is not a function of the brain but of our neural system. Secondly, in the closing section of his book Hayek argues that his theory is in fact the only non materialist theory because it does not use any "hylomorphic" concepts when describing the mental order (F.A. Hayek 1952a p.178). But if sensory and mental are two words to describe the same order then Hayek is in fact giving a substance to the mental.

[1] By Aristotelian standpoint Gray means the possibility of distancing oneself from the object of one's enquiry so as to acquire a "pure" perspective.

plainly admits that his theory does not accept any reality except, of course, that of the "orders" he has just introduced. The fact that he does not accept reality does not preclude the demand that reality should be identified with the construction of his system as a whole[1]. Indeed, this problem is apparent in all subjectivist and skeptical theories which try to dismiss the existence of objective reality. One might disagree on a certain content of the word "reality" but, when one tries to dismiss objective reality altogether, the first impact would logically be that one's theory, the very procedure by which one is trying to prove that reality does not exist, becomes in its turn either a refutation of the initial claim or a non-entity. In that sense, Hayek's attempt to deprive "real" of any meaning might be interpreted as an attempt to deny all existing concepts of reality only to introduce his own[2].

This problem was apparent in all the 18th century skeptical theory. Both Berkeley and Hume, while denying objective reality in the materialist sense, were at the same time trying to find some criteria according to which they could distinguish between the real and the fictitious. Berkeley refuses the existence of things outside our consciousness; by doing so he comes face to face with the problem of the distinction between real and not real. Being aware of the problem he is trying to provide an answer which turns out to be less than satisfactory. "If any man thinks this detracts from the existence or reality of things, he is very far from understanding what has been premised in the plainest terms I could think of. (...). There are spiritual substances, minds or human souls, which will or excite ideas in themselves at pleasure; but these are faint, weak and unsteady in respect of others they perceive by Sense (...). These latter are said to have more reality in them than the former;" (G. Berkeley in Fraser 1874 p.51). At the same time, there seems to be a very close connection of Hayek's ontological concepts with those of Hume. Indeed what Hume calls "skepticism" is quite close to the heart of the "new" philosophy. These concepts are characterized by a refusal to explain sensations as the effects of objects or spirits,

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[1] The problem persists no matter what the content of "reality" will be. Thus, an advocate of metaphysics can easily argue that "despite the intellectual humility of his "critical rationalism", Hayek vests enough confidence in his own reason to be able to assure, on the basis of it, that there is no supra-natural order of reality which could ever influence or interpose itself in the natural order, whether in the matter of ethics or anything else." (G. Walker 1986 p.36).

[2] See also J. Gray 1980a.

that is, to deduce them from the external world on the one hand, or, from a deity on the other[1]. Some attention should be drawn to the fact that for Hume the two alternatives were at least relatively clear as well as to his "warning" that the relation between perception and reality will always remain the favorite topic of the skepticists[2].

It, thus, appears that, as Plekhanov has noticed[3], neither monism nor the recognition of a certain ultimate unity in the world are enough to guarantee the separation of a theory from idealism[4]. Terminology apart, as long as the absolute counterpoising of the mental to the physical is retained, a theory cannot escape the lapse into some kind of idealism.

2. The Two Orders of the World: Monism and Dualism in Hayek's Ontology

Let us now examine this division of the world into orders.The term order has a twofold meaning in Hayek's theory. Firstly, it replaces the "metaphysically" charged concept of the world that the traditional philosophy uses. Secondly, it becomes consequently the "basis", the organizational concept of Hayek's theory. The content of the term is not clarified, to my knowledge, in any part of Hayek's work. In a broader sense we can say that the content of the concept is identical with the content of the book *The Sensory Order*. More concretely, "order" for Hayek is the result of a certain classification. The category, therefore, tells us nothing concerning the objective existence of matter and its relation to mind. It is rather an "epistemological" category in the sense that Hayek gives to the term "epistemology"[5]. But is Hayek

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[1] See in particular D. Hume 1894 pp.151-153.

[2] For a critique of Berkeley's and Hume's concepts of objective reality see also J. Bennett 1971 chapters on reality and objectivity respectively.

[3] See Plekhanov 1956 p.12.

[4] See also T. O. Oizerman 1988 pp.54-74.

[5] That Hayek's intention is to produce a theory based on epistemological grounds only is also advocated, among others, by E. Miller 1976 p.383.

actually using epistemology in the ontology-free sense he implies? When he says that all that exists are orders of events is he not making an ontological rather than epistemological point? Classification presupposes, of course, the classifying subject. The question that Hayek asks refers to the relation of that subject to the results of his/her own classification. But, in that way, ontologically speaking, the classifying subject emerges as the only (necessarily) existing thing. "Objective" reality, in the form of the result of the subject's action, becomes the manifestation of the latter's own existence[1]. Thus, in ontology the problem is solved without being positively stated. "Order", then, cannot acquire the significance Hayek is trying to attribute to it outside a definite ontological frame.

The initial problem however does not lie in the relation of the subject to the results of his actions, but in the relation of the acting subject - active subjectivity being the only way of grasping the existence of the subject - to objective reality. That question Hayek refuses to pose and it is in the light of that relation that his theory acquires a problematic character. For, notwithstanding his verbal monism, Hayek actually presupposes a Cartesian ontological dualism[2]. In that sense, "order" as a categorial concept seems a misleading term. If "order" is a conventional term which helps us understand the way nature exists, then the only assumption could be that the world is real, objective and that it exists independently from our thought. At the same time nothing can be assumed on the knowability of that world from the adoption of "order" as such. It also means that there is no ground for the dubious identification between the mental and the physical as two orders. If, on the contrary, order is a word that describes the organization of our mind only, then the only assumption could be that the world exists as a product, a construction of our mind[3].

Hayek's reluctance to attribute any meaning to the existence of a "real" world, as well as his affinity with Berkeley and Hume on that matter, point towards the latter answer. But the concept of "order" is also used in a more "skeptical" way. In order

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[1] Notice the similarity with the Cartesian *cogito ergo sum.*

[2] See also E. Miller 1976 p.389.

[3] On that see, apart from the classic Marxist literature, I. Frolov (ed.) 1984, and especially T. Oizerman 1988. Western accounts can be found in D. H. Ruben 1977; also M. Cornforth's somehow simplistic view in M. Cornforth 1954 especially in volume III.

to grasp the epistemological function of orders, Hayek says, we must try to relate them to each other. It is obvious that since he considers objective reality a meaningless category, this relation can only be a comparison not of the elements of the orders but of the "similarity of the structures as wholes and the position of the corresponding elements within the structure" (F.A. Hayek 1952a p.39). This task is left to the concept of "isomorphism" which here plays the role of the logical mediator between structures.

It must be remembered that Hayek initially distinguished between two such structures (mental and physical). It must also be remembered that both of them were introduced as purely epistemological categories. Finally an attempt was made to show that this introduction of orders actually presupposes a sharp (Cartesian) ontological dualism between mental and physical which, although not identical with Hayek's distinction between mental and physical orders, is nevertheless their logical basis. In order to compare the two initial systems-orders, Hayek introduces a third order (neural) which is only a part of the physical. Isomorphism, says Hayek, exists only between the mental and the neural orders. But, by definition, it does not and cannot exist between the mental and the physical orders. He further implies that it does not exist between the neural and the physical either. Now the neural order, being a part of the physical, serves as the necessary link between the mental and the physical. It furnishes the basis for the construction of the system-order of the phenomena. Thus Hayek is trying to place the roots of the phenomena within some sort of objectivity. The crux of his argument, however, lies elsewhere. For, neural order is but a part of the physical. The rest of the latter, thus, is doomed to remain in the realm of the "beyond" *by definition*. In that way Hayek manages to accommodate his "skepticism" without explicitly taking refuge to the Kantian thing-in-itself. The rest of the physical order, albeit clearly in the "beyond", does not have either the fixity or the necessity of the thing-in-itself[1]. Its "necessity" is exhausted in its function in the system as a whole. But its content need not be either fixed or accessible. Hence the predominantly subjective content of Hayek's political theory.

The concept of "order" and its function, thus, are of outstanding importance in

[1] See also E. Miller 1976 p.385.

terms of methodology. First, it presupposes a sharp Cartesian ontological dualism that underpins the whole of Hayek's theory. Second, it functions as the limit beyond which we can never have access. Third, it deprives the realm of the "beyond" that emerges as the result of its own function, of any fixity or necessity.

3. The "New" Philosophy of Hayek: Problems of Epistemology and Idealism

The part of Hayek's book which concerns the characterization of his own theory is one of the most neglected chapters of *The Sensory Order*. Nevertheless, it has a special interest as far as Hayek's eclecticism is concerned, because it is there that Hayek "proves" the difference of his theory from traditional materialism and, in fact, from all previous philosophy.

In the first place he denies the "accusation" that his theory is materialism on the basis that materialism "implies certain conclusions which are almost the opposite of those which in fact follow from it [his theory]" (F.A. Hayek 1952a p.177). On the contrary, Hayek's theory is the only alternative to the "hylomorphic manner of thinking" which has prevailed among philosophers. "(...) it is indeed the only theory which is not materialistic" (F.A. Hayek 1952a p.178) because his account of the mental world "does not attribute to mind any property which we derive from our acquaintance with matter" (F.A. Hayek 1952a p.178). At the same time, it is distinct from idealism because it rejects the *a priori* distinction between physical and mental. It is also different from the "double aspect" theories because "What could be regarded as the physical aspect of this double faced entity would not be the individual neural process but only the complete order of all these processes" (F.A. Hayek 1952a p.178) which is only another name for what we call mind. Notice the inadequacy of this argument. Hayek shifts the stress of the "double aspect" theories - which are only a category of dualism - from ontological essence to subject. The fact that Hayek verbally dismisses individual mind as the subject of his ontology - a circumstance which is not established adequately in his proposed individualistic-compositive method - does not detract in the least from the fact that he conceives of reality in the rationalist dualist way. Thus, Murray avers with much justification that for Hayek

social sciences "deal with the phenomena of the individual mind" (A.H. Murray 1945 p.151). The overall concept remains one of a sharp distinction between mind and nature even if the first pole of the relation is conceived supra-individually[1].

That is how Hayek presents his "new" theory. To begin with, let us concentrate on the definition of mind which is not infected by any "acquaintance" with matter. "This order which we call mind is thus the order prevailing at a particular part of the physical universe - that part of it which is ourselves" (F.A. Hayek 1952a p.178). In the first place, then, mind is still defined in reference to the physical universe (matter). Furthermore, Hayek openly admits the rationalist identification of "mind" (which, in that case, is further identified with "knowledge") in the abstract with "our" mind (and knowledge). It seems now clear enough that the effort Hayek is making to purify his theory of "hylomorphic" concepts only demonstrates the correctness of the remarks of those critics who have stressed the importance of his rational "dualism". In Hayek "(...) the argument against objectivism assumes the sharp distinction between object-out-there and idea which is characteristic of modern psychology" (A.H. Murray 1945 p.149) and philosophy.[2]

Hayek's starting point, namely the division of the world into phenomenal and physical orders, is inconsistent if it is taken in a Kantian sense. He introduces a theory according to which we can only get to know the phenomenal, or mental order of things. The physical order, on the other hand, is a classification "we" make of events according to the result they produce in conjunction with other events. But if every perception we have, being a mental activity, can only lead us to the phenomenal order, how can we ever talk about a classification (mental activity) which might lead us to results different than the mental order?

The task that Hayek puts to himself is to prove that there exists a certain "correspondence" between the phenomenal and the physical world. In materialist empiricism one could imagine of the possibility of such a correspondence since certain

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[1] For similar views see also A.H. Murray 1945 and E. Miller 1976.

[2] It could be argued that Hayek is actually adopting a position close to that of Berkeley whereby the ontological priority of mind is established by an *a posteriori* identification of nature with mind (G. Berkeley in Fraser 1874 pp.87-88). See also Fraser's own comments on the inconsistency of the Humean position that Hayek adopts on the problem of knowability of the world (Fraser 1874 p.81).

characteristics were attributed to the objects as such. Thus, we would not have any reason to suspect that these objects would be different before becoming known to us. There existed a certain independence between the knowable object and the process of knowing.

In Hayek's theory the object to be known is thoroughly determined by the process of knowing. Knowing (or classifying) necessarily requires only the active intervention of mind in a determinative sense - a self-contained "interpretation". If that is true, if an active self-contained "interpretation" according to *a priori* mental categories is a necessary condition of knowing itself, then there cannot be any classification of events according to their relations with each other. If, on the other hand, there were a case where knowing involved something more than the (re)structuring of the rational form (order) - that is, a notion of "facticity" - then the system would run into trouble. For, whatever transcends the limits of the *a priori* forms of thinking is bound to be left out if the system is to retain any validity as such. So, if the presupposition that all we know involves the active interpretation according to a "map" is correct, it follows that we cannot know anything whose existence is independent from our synthesis of the understanding. The existence of the "objective" world necessarily implies the existence of our classifying, interpretative thought. Therefore, we can never know any object or event which is not related to our subjective classification; we can never know anything about the way "pure" events are related to each other[1].

We have tried to prove Hayek's inconsistency on two levels. Firstly, if our mind has access only to the phenomenal world then we cannot make any judgement on the "order" of the physical world, or, if we can get to know (even approximately) the physical world, then the sharp distinction between phenomenal and physical does not hold any longer. We will have to admit that the "beyond" reaches into the "this-side" and determines it. Secondly, if all that our mind perceives are phenomena (mental world), then we cannot make any statement about the existence of an external

[1] Thus, "(...) the purely phenomenal world within consciousness (Locke and Hume) cannot create science, which cannot be explained as a merely subjective product." (G. de Ruggiero 1921 p.41).

world[1] unless we use a transcendent concept[2]; or, if we state that an external world exists, we cannot defend the position that our mind is capable of knowing a phenomenal world only.

Hayek suggests, for "practical" reasons, that if we want to learn something about the world we must adopt a dualistic approach. "In this specific sense we shall never be able to bridge the gap between physical and mental phenomena" (F.A. Hayek 1952a p.179). This dualistic approach results in an attack that Hayek launches[3] against the materialist concept of human self-determination. Its existence is not required for "practical" reasons but for reasons which derive from the heart of Hayek's theory. It is because Hayek believes that nature (the physical) is an unordered sum of unnecessitated events (i.e. "irrational") which acquires a certain shape because of our (rational) mental activity, that this dualism becomes necessary. If we accept that necessity and causality exist in nature primarily, then we do not have to adopt any "practical" dualism in epistemology in order to explain our ontological presuppositions. Hayek's dualism, then, is made necessary for reasons implicit in his theory[4]. It is the link between a verbally ousted ontology and a conservative social and political theory. The "inability" of the human mind to comprehend itself and the world becomes the basis of Hayek's social and political theory; it also becomes the starting point from which he deduces his conservative individualism.

Hayek seems to base his methodological dualism on man's inability to understand the world as a whole. Whatever we may be able to know about the mental world (as well as the physical he should have added) will be the result of our previous knowledge about the mental world. "The whole idea of the mind explaining itself is a logical contradiction - nonsense in the literal meaning of the word - and a result of the prejudice that we must be able to deal with mental events in the same manner as we deal with physical events" (F.A. Hayek 1952a p.192). And although Hayek does

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[1] Since the very procedure of making a statement is a mental activity and therefore the event that it refers to a part of the phenomenal world.

[2] For example, faith.

[3] Notably, in his social theory.

[4] For a similar account, see E. Miller 1976 p.390.

not exclude the possibility of the brain building a machine which will be able to explain its (the brain's) actions[1] we can take Forsyth's remark that "Unfortunately Hayek does not seem to recognize that this "prejudice" is the very one that has guided him throughout his whole analysis. His account of mental activity is based on the idea that it can be and in principle *is* reducible to physical activity" (M. Forsyth 1988 p.142) as a supplementary proof of Hayek's eclectic shifting between naturalism and idealism. The picture is completed with Hayek's conclusion in the last paragraph of *The Sensory Order*. "Our conclusion, therefore, must be that *to us* mind must remain forever a realm of its own which we can know only through directly experiencing it, but which we shall never be able fully to explain or to "reduce" to something else" (F.A. Hayek 1952a p.194). After a full 193 pages Hayek comes back to the initial idealist position: mind is not a different substance but to us it must remain forever a realm of its own. Mind cannot be defined simply because it cannot be reduced to something else. But then how can we argue that "in some ultimate sense mental phenomena are" nothing but "physical processes"? Hayek's theory is doomed to veer between elements of verbal materialism and idealism. But in any case it cannot constitute - as Hayek seems to believe - a "third way" in philosophy. His efforts to define the basic categories of matter and mind in reference to a third concept (pre-sensory experiences) have failed simply because this is not possible.

4. The Distinction Between Method and Ontology

There is also another implication that this dualism has for Hayek's theory: it distinguishes completely between ontology and methodology. This confrontation of ontological and methodological principles leads to the theoretical inconsistency that we have mentioned before. Ontologically Hayek suggests that in the last analysis the world is physical. But whenever one has to make any judgement on it one must look at it in a dualist perspective; for us the gap between the mental and the physical cannot be bridged. What Hayek does not seem to take into account is that the very

[1] Notice that this possibility is ruled out completely from Hayek's social theory.

statement that the world is physical is a judgement and thus it has to be made on a dualist basis. Therefore, the principles "there is a monist order in the world" and "to us only a dualist approach is possible" cannot hold together in epistemology.

Furthermore, this distinction between ontology and methodology makes the first an empty word. Indeed, when we examine Hayek's social theory we shall notice that his ontological monism is altogether forgotten while the methodological dualism has become the only guideline according to which his social theory is structured. Here, the "theoretical" acceptance of a judgement on how the world is becomes irrelevant since to "us" the only possible approach is through the sharp dualism between the mental and the physical. It is precisely in that field that its implications can better be grasped. In social sciences, Hayek says, the only adequate method of proceeding is the individualistic or compositive method. Why is that so? Because in social sciences there is no sensuous content whatsoever and thus the sovereignty of the rational form becomes the only actuality. It seems that on the plane of social sciences Hayek has answered the initial dilemma of the rational dualistic approach on the basis of its first alternative. It is the rational form that will determine precisely and solely its own content, thus delimiting, at the same time, the existence of that content. Thus, no actuality - in the sense of irrational content - can ever exist in that field. Hayek's dogmatic rationalism leads him to extremes when he states that social sciences do not deal with given wholes but only with constructed rational systems-models, built from "familiar elements". The whole, then, exists in so far as we can select from the mass of irrational content the elements that will fit to our rationally preconstructed model[1]. It is clear, however, that this view excludes large areas of actuality. The subjectivist element that Hayek introduces in his "new" theory, although not of capital importance at this point, only aggravates his account. For, it makes the construction of a rational formal system a "private" affair that takes place within the individual mind of the isolated subject. Literally, then, even "our" knowledge becomes too wide a category for the Hayekian system; only "my" knowledge can be accounted for[2].

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[1] See also A.H. Murray 1945 p.150.

[2] For a relevant argument, see T. Adorno (et al.) 1976.

5. Epistemology and Methodology: Anti-Rationalism and the Principles of Scientific Discovery

A closer look at the debate over Hayek's methodology might prove useful at this point. Most of the methodological discussions on Hayek spring from the more or less critical approach of the writer to his theory of mind and knowledge[1]. Thus, for Nishiyama, there is no question as to the starting point of Hayek's philosophy. "It is rather notable that a strong emphasis to the undeniable limitation of human reason or a categorical denial of the claim of human omniscience provides a corner stone, if not a starting point for the Hayekian thought." (C. Nishiyama 1967 p.339). The refutation of reason is, then, undeniably the basic philosophical premise of Hayek's[2]. The powerful negation of reason both in Hayek's theory and in Nishiyama's defence of it, however, seems somehow incomplete. Hayek and Nishiyama are, after all, concerned *not* to be characterized as irrationalists. Whether this is one of the remnants of Hayek's "scientism" or simply the result of the belief that a direct appeal to the "irrational" would discredit his theory, the fact remains that Nishiyama, perhaps more than Hayek himself, scholastically stresses that Hayek's theory is not against reason as such but only against "unlimited reason". Reason is not to be denied altogether. On the contrary, it is pushed further and further but always with a humble realization of its limitations. Nishiyama even states that Hayek's theory actually promotes reason more than any other (C. Nishiyama 1967 p.341)[3].

In terms of methodology, Nishiyama states that "no science can exist apart from the method that can be called hypothetico-deductive-observational method" (C. Nishiyama 1967 p.341). Consequently, the unity in science is founded, primarily, on

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[1] A similar point is made, with regard to the positivist dispute on methodology, by J. O' Neil (1973 p.5).

[2] Nishiyama, in his effort to persuade for the importance of this point, does not hesitate to appeal to the traditional culture of his Japanese audience. One easily understands the "irritation" of the orthodox liberal; after all the Japanese tradition and culture, admirable as it may be, is certainly not a liberal one.

[3] See however the more "distanced" critique of R.A. Arnold (1980 p.344).

methodological grounds. This method stresses the role of hypothesis in scientific investigation. Indeed, as Nishiyama avers, "(...) no systematic enquiry in science has made progress apart from some hypotheses, adapted to its special topic." (C. Nishiyama 1967 p.342). From this self-evident fact Nishiyama "deduces" the three principles of the Hayekian methodology. Firstly, there can be no verification of a hypothesis; only a refutation of it. Secondly, scientific theories cannot predict the occurrence of an event, only its non occurrence. "In this sense the predictions made by scientific theories are really of the nature of the prognosis of principle." (C. Nishiyama 1967 p.342). Thirdly, there cannot be a complete falsification of an hypothesis any more than a complete verification of it. "What this means is that there is no such thing as truth in the field of science but only contingent truth (...)." (C. Nishiyama 1967 p.342). So, Nishiyama concludes, "Philosophy must once again make it explicit that no method can exist apart from some assumption involved in the choice of this method." (C. Nishiyama 1967 p.342). It is not altogether clear how one can, starting from a mere common-place statement, reach so profound conclusions. Hypothesis, taken as a *sine qua non* condition of science, is, of course, just such a common-place concept. Common-place, that is, to the extent that we take men as the creators of science. There can hardly be any theory that fulfills the above condition and denies the priority of hypotheses in inquiry. Besides, if there were one such theory, it would have been likely to be Hayek's since it is Hayek who denies the relevance of the outcomes of human conduct in reference to men's initial plans (hypotheses). And it is Hayek again who denies any essential relevance of his ontological premises to his "ontology-free" method.

What Nishiyama really means is not merely that a hypothesis is prior to an inquiry; his point is that the hypothesis is in a different category from the inquiry and that its priority is qualitative rather than chronological, determinative rather than presuppositional. The question, therefore, is not whether a hypothesis is needed for scientific investigation, but whether this hypothesis is something qualitatively different, self-contained (and in that sense arbitrary) in relation to objective reality, or if it is framed and thus determined by objective reality (the inquiry itself being considered

as part of it)[1]. This question, although not stated openly, is nevertheless answered in the conclusions presented by Nishiyama. No method exists apart from an assumption involved in its choice, he says. After the refutation of objective reality in the third principle of "methodology", it becomes apparent that the assumption mentioned - as in the initial hypothesis - is taken as a distinct category whose relevance to reality is debatable, to say the least. In that sense Nishiyama states, possibly exceeding Hayek's anticipation, that all hypotheses are value-relevant and the point is to have them purified of this value-relevancy. The triviality of the initial statement is now transformed completely: the content of the term "hypothesis", far from being merely the physiological mental function of a human being, is taken to be the "mental as such", that is, the uniquely distinct territory of the "universe" which can know the phenomena. Thus, hypotheses, along with assumptions, are taken together as constructions of the mind, completely cut off from an access to reality. That is why the demand for a value-free hypothesis emerges as *the objective*. But this purification cannot take place as the result of rational action; "such rigor can be assumed only in the free competition of various hypotheses" (C. Nishiyama 1967 p.342). There is much more than a simple deduction from the initial premise to the above conclusion; there is much that is taken as self-evident and unavoidable and much that is actually introduced through the back door. Hence, it is not the fact that an hypothesis is needed in a scientific inquiry that needs to be discussed, but the content of the term "hypothesis". Had Nishiyama discussed this, he would have found it less easy to acquire the widespread agreement he implies. The same method is followed in the statement of the three methodological principles of scientific investigation. The principle of falsification is indeed of major importance in natural sciences and Popper's contribution to this area is, I think, undeniable. But is it only one step from this principle to "the methodological foundation of Professor Hayek's" - i.e. the assertion of the sovereignty of the general rules in society? Again, as in the case of the hypotheses, Nishiyama starts from a widely accepted principle and, by the same token, introduces certain elements of the Hayekian theory as equally widely accepted.

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[1] Nishiyama implies a Popperian use of "hypothesis". For a critique of Popper's concept of "hypothesis", see T. Adorno in T. Adorno (et al.) 1976 p.69 and p.112).

Furthermore it is quite logical that no complete falsification can exist since this would practically mean the verification of an hypothesis - something that is ruled out as impossible right from the beginning[1]. But "what this means" is far from being a self-evident assertion. Nishiyama, in an original empirio-critical mood, tries to annul truth altogether. If he means that there are no absolute eternal truths in social sciences - a thesis that the development of science has largely supported even in the field of natural sciences - then Hayek, or Popper, are certainly not the first to introduce it. But from this point to the argument that there is only "contingent truth" there is a long way to go[2]. Nishiyama actually denies a certain abstract content of "truth" only to replace it by an equally abstract and unhistorical denial of truth as such[3]. But such a denial is not beyond dispute. Popper's mistake to equate political "openness" with openness in science has been a frequent target of criticism. But if in Popper's case this resulted in a certain "closedness" through the imposition of a "telos" (such as knowledge) in a structure without subjects[4], in Hayek's case it leads to an open political conservatism. For, by superimposing his political ideas upon such a methodology, Hayek produces a sterile theoretical construct that can be evaluated only according to the political significance of its propositions.

Two conclusions, related to methodological premises, can be drawn from the above discussion. Firstly, Hayek's methodology is, itself, "value-relevant" - i.e. it presupposes of necessity certain ontological premises. The fact that Hayek does not relate it explicitly to his actual ontological premises can only be taken as an inconsistency. The very statement that "all methodologies are value-relevant" becomes, in its turn, a value-relevant statement. The same applies to the introduction of all three major premises of "scientific enquiry", as well as to the suggestion that in

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[1] Notice that Popper advocates the possibility of a decisive refutation of a hypothesis (K.R. Popper 1972 p.122 and K. Popper in T. Adorno (et al.) 1976 p.89). Indeed that is his sole criterion of science.

[2] The same point is made by R.S. Rudner (1954 p.166). Rudner is tackling the subject from a different perspective but he reaches the same conclusion. He even remarks that if Hayek seriously implies methodological subjectivism in social sciences he does so only by an appeal to intuition.

[3] Adorno's remark that, empiricist methods whose attraction lies in their claim to objectivity actually favor the subjective, seems quite accurate in this case (T. Adorno in T. Adorno (et al.) 1976 p.71).

[4] see for example, K.R. Popper in I. Lakatos and A. Musgrave 1970 p.7. See also Adorno's comments in T. Adorno (et al.) 1976 p.59.

a "free competition of hypotheses" this value-relevancy can be surpassed. These statements constitute methodological premises and are, as such, value-relevant. Self-consistent skepticism, then, has to lead to relativism[1]. Secondly, Nishiyama, more than Hayek himself, stresses the empiricist-scientistic content of Hayek's theory. It is the dualism between facts (accessible by science) and values (mental constructions) and the demand for a purification of methodology in science that places Hayek's theory in the "scientistic" camp. And it is his belief in the inability of human mind to understand this process of purification, as well as the essential priority of the mental over the physical, that gives his theory a distinctive conservative flavor[2].

The consequences of the use of the individualistic-compositive method in Hayek's theory are far-reaching. By placing the weight of his argument on the predominance of the analytic method over the compositive in the case of natural sciences and *vice versa* in the case of social sciences,it is argued[3], Hayek misses the point: "Indeed, it will appear that Professor Hayek has himself in this respect not quite escaped from the trammels of scientism - or, as we will call it further on, Cartesianism." (A.H. Murray 1945 p.152). The important conclusion that Murray reaches in his critical examination of Hayek's theory is that methodology alone is simply not enough to lead any philosopher to a substantive conception of society[4]. As he puts it "The problem is clearly a matter of premises, and not merely one of method." (A.H. Murray 1945 p.152). The fact that Hayek attempts to establish his "Free Society" by using an apparently ontologically neutral method is in itself a proof of his "scientism" or "Cartesianism". "If Professor Hayek expects his individualistic compositive method not to lead him into a planned, mechanistic view of society he

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[1] For a liberal account of the constant danger of relativist outcomes in liberal-skeptical theories, see J.A. Hall 1987 chapter 1. For a socialist inclined critique on the same subject, see A. Arblaster 1984. On Hayek's "historical relativism" that comes about as a result of his persistence on social evolutionism, see N. Barry 1982 p.55. The aspect of "cultural relativism" is stressed in the same context by D. Gordon (1981 p.11).

[2] See also F.A. Hayek in F.A. Hayek 1954 pp.3-29 where he gives one of the most clear examples of the application of his concept of methodology in social sciences and in history in particular.

[3] A. H. Murray 1945

[4] A similar view is presented by R.S. Rudner 1954 pp.164-168; for a "classic" debate on the possibility of having "pure" methodology in social sciences, see T. Adorno (et al.) 1976.

must examine carefully the premises involved in his theory of the nature of his subject-matter (...). Method alone is not sufficient." (A.H. Murray 1945 p.152). And further "The compositive method by itself is still too near cartesian scientism (...)." (A.H. Murray 1945 p.152). The points that Murray stresses, then, are: firstly, that methodology alone is not enough to produce a conception of society. This point should have already been clear to Hayek since he seems to hold the same view in the course of his presentation of the problem of methodology. However, both he and Nishiyama commit the error of considering *their* methodology as irrelevant to any ontological premises. Secondly, the particular methodology that Hayek uses is - one could say for the above mentioned reasons alone - too close to rationalism and "scientism".

In discussing Hayek's premises themselves, Murray argues that Hayek "has gone back to before Descartes prepared the way for (and himself committed) scientism by separating *res cognitas* from *res extensa*, thereby giving priority to *res extensa* and the methods suitable for the study of *res extensa*." (A.H. Murray 1945 p.153). This leads Hayek to a typical and inevitable cartesian dualism. Hayek's dualism then, lies in the separation of the phenomenon from the thing-in-itself and the consequential relegation of the latter to an unknowable realm; a separation which is not methodological but ontological. In that sense, it becomes a necessary precondition of his theory. Finally, it must be stressed that at least for Murray, Hayek's intention to introduce the idea into social phenomena is quite obvious. This introduction, however, seems to be implied contrary to Hayek's explicit intention (as expressed by Nishiyama) of "purifying" social sciences from any subjectivist ideological contamination.

6. The Unity of Methodology in Hayek's Theory

It would seem then that Hayek's theory, being "skeptical" in form, has managed to initiate some confusion among scholars in that field. Many among them are all too easily prepared to accept the dismissal of totality and of any ontological presupposition from Hayek's account. For example, N. Barry suggests that Hayek's

ideas underwent an important shift at a certain point and are now characterized by his "acceptance of Sir Karl Popper's account of the basic unity of scientific method" (N. Barry 1979 p.27) thus implying that a monistic concept underpins Hayek's philosophy. Indeed, Hayek himself argues in the opening pages of his *Studies* that there is no essential difference between the methodologies of the various disciplines of science (F.A. Hayek 1967/69 p.VIII). A.H. Murray (1945), on the contrary, avers that Hayek implies a fundamental difference between social and natural sciences; a difference that derives from the differences in their subject-matters. Barry obviously implies that there was a period when Hayek held a different view on the nature of the methodologies of social sciences. This view, however, is hardly argued for. The difficulties that Hayek should have faced in view of the consequences that this shift would have had in his own theory remain obscure. The concept of the "shift" also ignores some very important remarks that lurked in Hayek's thought ever since W.W.II. For example, what is attempted in *The Sensory Order* is an overall account of the function of mind during the cognitive process, irrespective of the concrete subject-matter of that process. In the last section of the book, Hayek clearly seeks to establish the relation between the physical functioning of the mind and the process of cognition as a necessary (i.e. logical) one in all its manifestations.

The above objections hold for the attempt that Murray makes to distinguish between methods in social and physical sciences in Hayek's theory. In fact, Murray's own view is that such a distinction exists and that Hayek's criteria are not adequate enough and/or radical enough to bring the distinction forward clearly (A.H. Murray 1945 p.151). These views, however, tend to confuse two different things. One has only to look at Hayek's disciple and admirer, Nishiyama, in order to gain a clear picture of the Hayekian resolutive-compositive-individualistic method. From that account it becomes clear that methodology occupies a very special place in Hayek's system. Indeed, it is so closely connected with his philosophical views and, above all, with social and political philosophy, that neither is there any place for radical differences between the various sciences nor for any radical "shift". One might argue that Hayek's terminology underwent some changes - thus becoming more "philosophical" - as a result of his acquaintance with Popper, but that is as far as one can go safely. Murray, nevertheless, thinks that Hayek distinguishes between social and

physical sciences because of the nature of their subject-matters. "The subject-matter of social sciences cannot be classified into the categories of the natural sciences for the social sciences have to do not merely with the relation between things but with the relation between man and things and man and man." (A.H. Murray 1945 p.150). The question, however, is not whether we can use the concrete techniques of the various sciences interchangeably but whether there are any categories *the same in principle* in the process of cognition and thus in scientific investigation. To that question Hayek never hesitated to give an affirmative answer.

The unity of scientific investigation is assured in the Hayekian thought by means of two further abstractions. On the one hand, there is the identification of "our" knowledge with knowledge in general. The bearer of this conception of knowledge is man in the abstract. Thus, in the subject-object relation, the first pole acquires its content irrespectively of the second. Furthermore, through the reduction of "our" knowledge to classification in terms of formal rational self-contained systems, the second pole becomes reducible and in principle calculable. Hayek's preference for the various "concrete" techniques (econometrics, statistics etc.) in social sciences is a testimony to that. It now appears that Hayek is using abstract man as the quantifiable measure of all things. In this quantification of the abstract man he/she becomes in his/her turn a "thing" directly comparable to the other things that surround him[1]. What is maintained, then, is that the unity of scientific method in Hayek's theory does not derive from the identity of the techniques the various disciplines use[2], but from the very principle of the existence of his formal rational system. It is this principle that allows Hayek to argue that in social sciences, as in natural sciences, the obligatory starting point as well as the only possible conclusion is the (individual) (re)construction of formal rational systems from the orderless irrationality of the "given" "elements". This is the only way to account for the prominent role that the various forms of calculability - mathematization - play in his theory, as well as his explicit belief that the ultimate role of science in general is classification - i.e.

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[1] For a similar view, see Y. Quiniou 1989 p.78.

[2] Although, in that respect too Hayek suggests an essential "merger" of the technics towards a more quantifiable direction.

construction of formal rational systems. The unity of scientific method is a *sine qua non* for the existence of Hayek's formal rational structures[1]. In that sense, it can be argued that the unity of methodology derives directly from Hayek's initial dualism.

7. Hayek and Popper on Methodology

A further elaboration of the debate which has developed over the years between Hayek and Popper on the use of the term "social engineering" can be used as supplementary basis for the above argument. Hayek has emphatically rejected any notion of social planning; by implication, he also objected to "social engineering" as an all too "mechanistic" term. Popper's view, in his first edition of *The Open Society* (1945) was that what Hayek called "centralized" or "collectivist" planning corresponded largely to his "Utopian Engineering". By implication, and since both writers used the above terms to describe one side of a dual problem, Popper thought that Hayek's "planning for freedom" corresponded to his "social engineering". The interesting point is that Popper explicitly derives this correspondence from Hayek's "scientism". "In other words, Hayek's criticism [of central planning] belongs to the realm of *social technology*. He points out a certain technological impossibility, namely that of drafting a plan for a society which is at once economically centralized *and* individualistic." (K.R. Popper 1973 p.285n.)[2].

In his later editions of *The Open Society*, Popper completed his view without modifying it. After the publication of *The Road to Serfdom*, he says, it became clear that Hayek would not use the term "social engineering", because he believes that it is associated with what he calls "scientism". However, Popper continues, "if by "scientism" we should mean the view that the methods of the social sciences are, to

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[1] Notice that for Popper at least it is clear that this unity constitutes the basis of his social engineering. Notwithstanding Popper's systematic demonstration of the inner relation between his epistemological beliefs (which Hayek seems to adopt) and his view for social engineering, Hayek still refuses to accept the logical necessity of the latter with no apparent justification, as will be argued below.

[2] First emphasis added.

a very considerable extent, the same as those of the natural sciences, then I should be obliged to plead "guilty" to being an adherent of "scientism";" (K.R. Popper 1973 p.286n.). It seems plain, then, that Popper accepts a relation with positivism much more easily. This point leads back to Murray's critique of Hayek. Indeed, the essence of his objection - that is, that Hayek cannot construct a "Free Society" underpinned by an ontologically neutral methodology, and that his methodology was too close to "scientism" - is what Popper openly admits. In that sense, Popper believes that, in the last analysis, Hayek too is of the same opinion. Therefore, he suggests, if the terminological issues are left out, Hayek's views are, in fact, favorable to his "Social Engineering" to the extent that Hayek, too, argues for the need, in a free society, of a reconstruction of what he terms a "legal framework". Thus, Popper's view remains essentially unalterable. The "scientistic" approach to which he pleads "guilty" also applies, in his opinion, to Hayek's case[1].

Popper repeats this view in his later *The Poverty of Historicism*[2]. He mentions Hayek's objection to his term and proceeds to a clarification. Take the *technological* hypothesis that one cannot centralize within a planning authority the knowledge needed for the satisfaction of personal needs in society. The social engineer must use the technological knowledge provided by the hypothesis which informs him of the limitations of his own knowledge, says Popper (K. Popper 1960 p.64n.). Popper insists that this case will demonstrate the compatibility (if not identity) of his ideas with Hayek's. The fact, however, remains that Popper does not see any difference between his system and that of Hayek's despite his insistence on the technological nature of the hypothesis and the engineering role of the reformer.

Hayek's own position[3] does not seem to point towards an essentially different direction. Hayek states that he is reluctant to adopt the term because "engineering" suggests too much of a technical problem of reconstruction. However, the content of

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[1] The same opinion is expressed by R.S. Rudner. Rudner argues that although Hayek disavows scientism in the sense defined by Popper he is unable to produce an argument which will establish his point. Rudner concludes that "it is not always so clear that the distinction to which Hayek's important arguments apply is a distinction in *methodology*." (R.S. Rudner 1954 p.164).

[2] K.R. Popper (1957) 1960.

[3] At least as it is stated in his relatively recent F.A. Hayek 1976 p.157n..

the term seems to be in accordance with his view that "we can always only tinker with parts of a given whole but never entirely redesign it" (F. A. Hayek 1976 p.25).

Related to the above discussion, but also pointing out an original problem that emerges when an account of the Hayekian theory is to be given in such terms, is Gray's view of the differences between the two philosophers. Although Gray's initial statement is that Hayek's account is quite different from that of Popper's, he does not seem to be able to establish his view sufficiently. Gray suggests that Hayek espouses a sharp distinction between the growth of knowledge in natural and in social sciences. Gray also argues that Hayek's case for a "Free Society" precludes "anything like conscious planning even of specific social institutions ("piecemeal social engineering")" (J. Gray 1986a p.113). This argument, however, has been doubly refuted both by Popper and by Hayek himself. Popper's view has already been cited; Hayek's refutation appears in the form of positive propositions for the planning of a "Free Society"[1]. It is also apparent in Hayek's own equation of the essence of Popper's view with his account of social change (cited above). Gray's concluding remarks seem to reveal some difficulty in finding any substantial differences between the two thinkers *in terms of purely philosophical premises*. "Hayek differs from Popper, then, in his highly conservative view of the limitations of reason and the dangers of theoretical inquiry into the social order and his corresponding modest account of the role of the state in social life." (J. Gray 1986a p.113). But, Gray adds immediately, "It would be a mistake to exaggerate this difference: both, after all, are critical rationalists, sharing a common attitude to the constructivism of Bacon and Descartes in the theory of knowledge" (J. Gray 1986a p.113). Both also endorse an evolutionary view in epistemology. This seems to suggest that they both start from similar (if not the same) epistemological and methodological views. It also seems to stress the importance of Murray's critique - namely, that in the last analysis it is a matter of premisses. Hayek ends up with a highly conservative account, not because his "scientific evolutionary" method led him to this, but because he led his method to

[1] See critique in part II and especially in part III on Hayek's proposal of a "Model Constitution".

conservatism; his conservatism was implicit right from the beginning[1]. Popper, on the other hand, using a similar epistemology[2], "was led" to *politically* different conclusions[3]. Again, Hayek does not hesitate to abandon his highly acclaimed epistemology and methodology when their outcomes are not in accordance with his political views. As Gray himself observes, the view that our reasoning always comes to a stop at our most basic practices ("justificationism") poses severe problems in the Hayekian theory whenever Hayek suggests that some areas of contemporary practice must be revised in a radical way. "The justificationist view that all criticisms must presuppose uncriticizable postulates or assumptions seems to be abandoned by Hayek in practice when he condemns large areas of current moral sentiment and practice as inimical to liberty, social stability and indeed to the continuance of our civilization." (J. Gray 1986a p.114). It is precisely this phenomenon, and the resulting impossibility of accounting for Hayek's theory in purely theoretical terms, that underpins the view that any critique of Hayek's theory which aims beyond a mere description of his inconsistencies must take his political premises as the determinative factor.

8. Agnostic Implications of Hayek's Theory

It would be superficial to assume that the distinction between epistemology and ontology and the exclusion of the latter from Hayek's theory was due to some kind of mistake or naivety. Rather it is the result of a necessary "omission" which, paradoxical as it may appear, springs right from the heart of modern rationalism. Hayek, of course, is well known for his denouncement of rationalism. Indeed, his work can be characterized - not without some justification - as anti-rationalistic. But, as can be shown from most of the passages where Hayek deals with rationalism, the

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[1] For a similar point, see Y. Quiniou 1989, A. Arblaster 1984 and R. Vernon 1976 (p.265 and p.266).

[2] For a different view see K.J. Scott 1960-1961 pp.331-336.

[3] Indeed, it now seems plain that the "consensus" politics of the 1950s and 1960s were deeply influenced by the "social engineering" thesis.

term is used in a superficial and unhistorical way[1]. The characteristic of modern thought, however, (in contrast with that of, say, the Middle Ages) is that it refuses to accept the world as something that has simply arisen independently of the knowing subject and tends to conceive of it rather as its own product[2]. Kant was in line with this view and so were Descartes, Hobbes, Spinoza and Leibniz before him to the extent that they all believed - each in his own, different way, of course - that the object of cognition can be known by us for the reason that, and to the degree in which it has been created by ourselves. It is on this basis of cognition whereby the objects are constructed out of the formal propositions of objectivity in general and classified into formal systems (like mathematics) that modern rationalism was developed. And that is as true in the case of Hume and Berkeley - whom Hayek considers as the founders of his anti-rationalism - as it is in case of Spinoza and Leibniz[3]. What else is the doubt of the "skeptical" philosophy as to the ability of "*our*" knowledge to achieve universally valid results, if not the other side of an unlimited confidence in the ability of these systematized, classified objects to account for the true essence of all things? What is in common in both cases is the equation of formal, rational knowledge with knowledge in general and with "our" knowledge. Rationalism in the sense of a formal system whose unity derives from its orientation towards that aspect of phenomena that can be grasped by the understanding, existed, of course, long before the birth of modern thought. What however distinguishes modern rationalism is its claim to find a principle to connect up all phenomena which in nature and society are found to confront mankind[4]. Hayek's[5] use of anti-rationalism is employed unhistorically as an abstraction. But if the question is pressed as to which

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[1] Hayek seems to place his whole argument in a false dilemma: either one will accept the absolute sovereignty of consciousness or one has to concede for a sovereignty of "nature" - primarily understood in the sense of his social evolutionism. The point comes out clearly in R.A. Arnold's (1980 pp.344-347) presentation of the "Hayekian position".

[2] The following analysis is based on the concepts that G. Lukacs advances in G. Lukacs 1971 and G. Lukacs 1980.

[3] On that point see Adorno's critique of positivism in T. Adorno (et al.) 1976.

[4] See G. Lukacs 1971 111-121.

[5] And, it should be noted, Popper's also.

spheres of life is this anti-rationalism related then it becomes clear that Hayek's anti-rationalism is only the other side of modern rationalism.

The way Hayek faces the problem of philosophy is much the same as the way the "skeptical" theorists have done before him. The problem seems to be reducible to two seemingly unconnected, if not contradictory complexes. On the one hand, there is the matter (in its logical sense), that is the content of the forms/categories with the aid of which "we" can get to know the world because we have created them. On the other, there emerges the problem of the "whole", of the totality of knowledge, or the "ultimate objects of knowledge" which are needed in order to gather partial knowledge into a totality, a cognizable world.

Hayek, along with the skeptical philosophers before him, dismisses the possibility of answering the second set of questions. He even takes them as false problems[1]. However, the question of totality is by no means left out of the Hayekian system. It emerges for instance in the sharp distinction between phenomena and noumenena and the repudiation of all attempts of "our" reason to obtain knowledge of the latter. The first set, thus, the content of the forms, appears to have nothing to do with the second which now constitutes the realm of the "beyond". Nevertheless, totality seems to leave the beyond and re-enter the "this-sidedness" of the problem every time the question of relating the sensuous content to the rational form appears. It does so in the form of the orderless irrational content, that is as the content that it is impossible to reduce to its rational elements[2]. Thus the existence of the sensuous content has to remain absolutely irreducible (i.e. irrational). This is how Hayek comes to face the problem of the "pure core" of empirical facts. The question for him is: are they to be taken as "given", or can this "giveness" be dissolved further into rational forms - i.e., can it be conceived as a product of "our" reason[3]? Hayek promotes the

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[1] Something that Kant has already done in his *Critique of the Pure Reason*, notably in the section on the Transcendental Dialectic, but also Hume, and of course Mach and modern empiricism, positivism and perhaps more crudely than all, pragmatism.

[2] The most extreme case here is the concept of the pre-sensory experience the content of which is taken as irreducible by definition because it is unconscious.

[3] The question holds both in the case where empirical facts are purely "sensuous" and in the case where their "sensuousness" derives from their "factual" essence, as Lukacs (1971 p.116) notes.

latter answer. But in doing so he does not seem to understand the consequences for the existence of his own system. With that, totality leaves the "beyond" for good and reappears as the necessity for formal rational determination of the system - now taken as a whole, an all-embracing system, hence an ultimate object of knowledge. Furthermore, the impossibility of comprehending the whole with the aid of the conceptual framework of the rational partial systems and the irrationality of the contents of the individual concepts are only the two sides of the same problem.

It can thus be shown that the demand for a universal system - a demand central to the whole of modern rationalism too - which so clearly emerges from the mechanistic approach of Hayek's, becomes impossible as soon as it is consciously stated[1]. For a rational system (order) has meaning to the extent that it arranges the partial (individual in that case) systems of forms into a coherent whole. This arrangement must be "necessary", that is, it must be created by the partial forms themselves. Such a system is all embracing and self-sufficient - that is, "closed" - in the sense that it is determined by the positing of its first principle; all consequences must be contained in the first principle, deduced from it, and thus, they must be in principle predictable and calculable[2]. And that holds good for Hayek's claim as to the unpredictability of the consequences of social order too. For Hayek's claim is merely a quantitative one. He argues that no one can grasp the totality of postulates which appear as an infinite process. However, this limitation implies the impossibility of surveying the whole of the system at once; but it says nothing of the principle of systematization as such. That is why Hayek in his *Sensory Order* does not exclude the possibility of a computer doing so; a possibility which he later subdues in the light of the disastrous effects it would have for his political theory.

Furthermore, the principle of systematization is hardly reconcilable with any kind of "facticity" that has to be accepted as actuality. Hence, the dilemma arises. Either the irrational content must be wholly integrated into the rational form; that is, the system must be comprehensive enough to accommodate all irrational contents

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[1] This point is also made with regard to the absolute distinction between facticity and concept by T. Adorno (in T. Adorno (et al.) 1976 p.6).

[2] See G. Lukacs 1971 p.117.

rationally *and ignore the rest as if they had no actuality*; or, once we accept actuality, the content or matter must be comprehended as reaching into the form and its organized structure as a system - that is, in the system itself. In the former case the result must be the exclusion of actuality as non existent, hence, dogmatism. In the latter, its inclusion as the determinative factor of the system. But in that case the system can no longer hold as such. At best, it might become an account of facts which are not rationally linked, that is, not systematic. The system loses its self-sufficiency as well as its "closeness", but at the cost of self-annihilation.

It is precisely this insoluble dilemma that forces Hayek into the abandonment of ontology as amounting to "metaphysics". And it is also that contradiction that forces him to deny as "unscientific" any attempt of philosophy to achieve a unified account of the whole realm of the knowable. Knowledge, in Hayek's theory, can only hope to provide the understanding of isolated specialized areas by means of abstract rational special systems which are fully self-sufficient and for that reason "closed". It is his firm belief that "The social sciences, thus, do not deal with "given" wholes but their task is to *constitute* these wholes by constructing models from familiar elements". Hence, Murray quite accurately remarks that, for Hayek, "Social sciences has to do with a world of "constructs" or ways of thinking." (A.H. Murray 1945 p.150). This also explains the profound importance that Hayek attaches to some techniques such as statistics in social sciences.

His dismissal of the knowability of the social being is also based on the impossibility of knowledge's constituting a unified whole. His account of methodology in the "independent" sciences derives again from the demand for "exactness" in each "independent" scientific area and his (true) belief that the highly abstract specialized rational systems used in such an area cannot give an adequate overall account of the knowable[1]. Rationality in the sciences and in "our" knowledge, then, emerges as the possibility of our creating unproblematic rational partial systems in a methodically purified world, that is, after their abstraction from the "irrationality"

[1] Economics are only a subject-matter in that problem. The abandonment of "macro-economics" and their replacement by "econometrics" furnishes a clear example of the above problem. The implications are even more extreme in the case of Friedman and the Chicago School as well as in the whole tradition of American pragmatism.

(non-createdness) of their underlying material base.

Nowhere is this distinction (and counterpoising) of the created-hence-rational as opposed to the non created, given-hence-irrational more clearly present in Hayek's theory than in his fundamental category of the rule of law[1]. Thought, for Hayek, can only establish the irrationality of matter as the "ultimate fact". This irrationality, however, reappears every time an attempt to give an account of the whole is made[2]. It is from this point that the category of culture and cultural evolution of traditions (so prominent in Hayek's social theory) acquires its function. Tradition, in its dual substance of made but not designed, becomes the ultimate horizon of totality. It cannot be derived from anything else and has to be accepted in its own terms, as "facticity". It is the ultimate facticity the limit beyond which nobody can reach; and at the same time it also acquires its irrational or rather supra-rational character as facticity, with all the social and political implications that this may have[3].

The problem of objectivity or actuality, acquires a rather crucial significance for the Hayekian theory. In the closing section of *The Sensory Order* Hayek states that "We must assume the existence of an objective world (or better of an objective order of the events which we experience in their phenomenal order) towards the recognition of which the phenomenal world is only a first approximation" (F.A. Hayek 1952a p.173). It seems, however, quite unlikely that we shall be able to find any reason for this conclusion in *The Sensory Order*. On the contrary the whole argument is that there does not exist any relation of gradual or procedural or any other kind of approximation between the mental and the physical order, not to mention the solid denial of objective or real world right from the opening of the book. In the first place, notwithstanding the initial rejection of the "metaphysical" distinction of classical philosophy - i.e. that between appearance and reality[4] Hayek seems unable to escape from it. In that case his thought clearly concedes legitimacy, in the last analysis, to the distinction between appearance and reality. Secondly, however, the position held

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[1] The distinction reaches its metaphysical highlight with the equation of social with natural laws.

[2] As in the case of society, or history for example.

[3] These implications will be examined more thoroughly in part III.

[4] Or, form and content as it has been expressed *supra*.

by Hayek in the above passage presents some difficulties which become fatal for his system as such. For, Hayek is now trying to resolve the problem of totality by the (logical) hypothesis that the irrational, orderless and "given" actuality[1] can, in fact, be mastered. It is obvious that the mere recognition of an objective actuality which transcends the limits of irrational matter as content, implies not only the recognition of matter-out-there but also the tacit admission that the rational form may be determined by the irrational content. Hence, the inadequacy of the system-order as such - that is, the impossibility of establishing formal logical (i.e. systematic) links between the various facts the forms of which are (or can be made) rational[2].

The self-annihilating (for the system) consequences of the above passage can also be seen in the way actuality is accounted for. It is by means of a logical assumption, that is, by a logical transcending of the limits of the system-order itself. It should be noted that the objection raised here does not imply the recognition of the form-content or appearance-reality relation either as a false or as an unsurpassable problem. So far, it only seeks to delimit the horizon of that dilemma and to point up the impossibility of both holding to the epistemological sovereignty of a formal rational system and transcending that system (by means of formal rational assumptions) by recognizing an "independent" actuality. Thus, the above quoted passage has repeatedly been pointed out as an example of inconsistency[3].

That the concept of actuality cannot be derived from Hayek's system can probably be shown best with reference to his social theory. Here Hayek emphatically excludes the possibility of getting to know anything that approximates to a totality precisely on the grounds that a classification of actuality into a formal system can never be adequate. Here, thus, there is no question of a gradual or any other approximation between appearance and reality. On the other hand, as Gray observes, Hayek sometimes relativizes any distinction between appearance and reality (J. Gray

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[1] In that case, objective actuality.

[2] Something to be noticed here is the immediate "correction" of the term "world" with the term "order". It remains completely incomprehensible how Hayek managed to attribute an order to objective actuality. After all, it is the irrationality and orderless character of that realm that Hayek seeks to establish throughout his work.

[3] See for example, M. Forsyth 1988 p.243.

1986a p.250n)[1]. There is an obvious note of disapproval in Gray's remark too. He seems to imply that such a relativism would inescapably lead to a sort of agnosticism the consequences of which we can hardly overcome. This view, which, in fact, seems to correspond to a very real danger for the Hayekian system, stresses the disastrous results that this relativization of the relation between the rationally constructed form and the "given" content might have. But what lies behind it is the tacit assumption that what appears at first sight as "given" is bound to remain in that state throughout the process of knowing. Hence, the need for a clear distinction at every time between the rationally constructed and the irrational "given". Indeed, this is the only way to avoid relativism once the two poles of the relation are taken as independently existing, self-contained categories - that is, once they have been abstracted from the relation itself. And in so far as Hayek sees the question of totality, of the ultimate objects of knowledge, either as metaphysics or as irrelevant to epistemology, in so far as he tends to consider (through the *a priori* limitation of mind) the "ultimate" objects of knowledge as formal rational classifications of irrational content, that is, in so far as the problem of the origins and nature of irrational content is unconditionally recognized and considered as insoluble, one can hardly accuse Gray of doing him any injustice. What Hayek emphatically disavows, however, could be the way out of that dead-end position: that is, dynamically to relativize the two poles of the relation by recognizing the constant possibility of the "given" becoming "created" and the "created", "given". It is this resolution of actuality into necessity that Hayek is not prepared to undertake, as will become clear in the causality-necessity question discussed below[2].

Even if there were an objective world, a judgement that Hayek should have never permitted himself, the whole of *The Sensory Order* is dedicated to convincing

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[1] Notice that, for Gray, it is clear that Hayek tackles the problem strictly within the limits of traditional philosophy.

[2] Notice, however that, for all his reluctance to attribute any clear meaning to actuality, in his political theory Hayek, at least at times, seems to conceive of actuality as "goodness" thus lapsing into dogmatic conservatism. Thus, Nishiyama, obviously feeling uncomfortable for advocating antirationalism in the field of politics, "explains" that "(...) as soon as we enter from the discursive world of scientific investigation to the one of action, we shift [sic!] from our anti-rationalism to our critical rationalism" (C. Nishiyama 1967 p.346).

us that we will never come any closer to an understanding of it. Furthermore, as Gray rightly points out, Hayek does not manage to prove that our knowledge does in fact approximate actuality through the process of trial and error and its "historical" version of competing traditions. Especially after the exclusion of necessity from Hayek's theory the problem becomes unsurpassable. That is, developments in human history hitherto might as well lead steadily away from actuality rather than towards it[1].

Another problem appears with the identity that Hayek implies between the physical and the external world. It should be remembered that Hayek defines physical world in the opening of *The Sensory Order* as the classification "*we*" make of certain physiological events. Consequently, both the phenomenal and the physical orders are classifications of our mind - they are products of our consciousness. So, the question of the relative priority as between mind and matter has already been answered without been asked. Maybe that is why Gray comments: "In philosophy, as in life, Hayek avers, we must take much for granted, or else we will never get started" (J. Gray 1986a p.5). There is no logical or epistemological necessity to attribute any objectivity to the "physical" order. Hayek himself implies this, in a way that marks what is going to remain a constant tension between a naturalistic-mechanistic and an antirationalistic-conservative approach throughout his work, when he discusses the problem of reality. "To accept this latter test [procedure employed by physical sciences when they ascertain that two objects which appear identical do not behave in the same way in relation to others] as the "criterion" of reality would force us to regard the various constructs of physics as more real than the things we can touch and see" (F.A. Hayek 1952a p.5)[2]. It is quite clear that Hayek cannot derive the existence of a real world from his theory. There is no legitimate way of referring to the external world, in an objective sense as distinct from ourselves, let alone to take it as an "order", when the only thing that initially exists is organizing mind. Indeed, Hayek tends towards this position in some parts of his book. "Whenever we study qualitative differences between experiences we are studying mental and not physical events, and

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[1] For the presentation of Gray's objection see the relevant section of part I.

[2] M. Forsyth (1988) however, seems to be on the right, especially in the context of the "approximatation" theory, when he points out that that is precisely what Hayek is doing in his mechanistic account of the cognitive process.

much that we believe to know about the external world is, in fact, knowledge about ourselves" (F.A. Hayek 1952a p.6). Now, although Hayek has distinguished his division of the world into phenomenal and physical from the traditional idealist distinction between appearance and reality, in the philosophical section of his book he seems to return to the traditional concept. The distinction between phenomenal and "physical" (which in his opinion is now equivalent to external) world is treated along the lines of traditional philosophy: "We thus possess knowledge about the phenomenal world which, because it is in this manner implicit in all sensory experience, must be true of all that we can experience through our senses. This does not mean, however, that this knowledge must also be true of the physical world, that is, of the order of the stimuli which cause our sensations" (F.A. Hayek 1952a p.168). In this passage the physical world is not treated as the formal rational order that man attributes to nature but as the order of nature itself which man is unable to reach. Notice, however, what an unstable status this order has. On the one hand, it is supposed to have a "structure" of its own; on the other, this status is attributed to it only as long as it is a "content" - that is, a stimulus for the formal rational system-order.

We have seen that in this section of *The Sensory Order* Hayek applies the term "physical" as a synonym of external. This means that he recognizes of necessity at least two distinct parts - "subjective" and "objective", internal (rational, formal, systematic) as distinct from external (actuality). This, however, leads us to an inconsistency: the unified order of events - Hayek's "monism" - collapses. Furthermore, he identifies the external, physical world with something that exists independently from our mind - although he admits that it exists only for "us", as an order of stimuli. It is, thus, in the form of the distinction between *res cognitas* and *res extensa* that dualism becomes the actual starting point of Hayek[1].

9. Hayek and Machian Empiricism: The Theory of Pre-Sensory Experience

Hayek's book *The Sensory Order*, being a treatise of theoretical psychology,

[1] See also A.H. Murray 1945.

extends over a wide field of topics which cannot be accounted for in this critical presentation. It might, however be helpful to focus on the last section of the book which refers to the "Philosophical Consequences" of the theory and which constitutes what is to become the philosophical basis of Hayek's social and political theory[1].

The first problem that Hayek faces in this section refers to the relation of his theory to 19th century empiricism as developed by Mach. We have argued before that Hayek's theory can best be understood when related to Mach's empiricism. In fact Hayek's theory is a "development" of Mach's empiricism in a more agnostic direction. That his theory constitutes a development of Mach's is also Hayek's point of view: "(...) in so far as we have been led into opposition to some of these [ideas] traditionally associated with empiricism, we have been led to their rejection not from an opposite point of view, but on the contrary, by a more consistent and radical application of its basic idea" (F.A. Hayek 1952a p.172).

The main point of Hayek's critique focuses on the concept of the "pure" or "primary core" of sensation that 19th century empiricism introduced. The problem (for Hayek) in this concept is that it implies that the root of the process of knowing the world - which is supposed to be based entirely on experience - is a kind of direct communication of properties of the external objects with the mental world. In other words that the basis of experience is the external objective world. The fact that Hayek is driving 19th century empiricism towards agnosticism must not discredit his (true) belief that he is trying to eradicate some of its inconsistencies. Indeed, he is doing so in view of the radical effects that the "pure core of sensations" concept had in the validity of the system as such. It is precisely because any direct communication of the system with actuality would imply some sort of determinative effect of the latter that this concept must be ousted. The way Hayek criticizes 19th century empiricism is also very illuminating in view of the contradiction he is facing when he tries to establish a relation, and what is more a relation of gradual approximatation, between appearance and reality.

Hayek's critique, then, is directed towards the assertion that objects have

[1] On the importance of the book and especially its last chapter there seems to be a unanimous agreement among modern scholars.

certain "properties" of their own which might be transferred through our nerves. Classical empiricism, and Mach as probably the most influential among its leading figures, interpreted experience as the only epistemological category. They held that the debate over the relation of matter with consciousness was obscuring and outdated. But experience was used by Mach in a rather eclectic way. Mach, for example, lapses into Berkeleyism when he declares that "What we call matter is a certain combination by elements (sensations)". At the same time Mach often strays into an interpretation of experience which is open to materialist reading: "The close connection of thought and experience creates modern natural science. Experience gives right to a thought. The latter is further elaborated and is again compared with experience"[1]. From the above it becomes clear that Mach (and as a matter of fact empiricism) did not manage to give a consistent account of the word experience[2].

Hayek seems to be in complete agreement with this part of empiricism. He is not in the least troubled by the fact that all empiricists in order to give a definition of experience are obliged to take refuge in the most general categories of matter and consciousness. He is not troubled by the fact that the supposed primary category of experience must be referred to a wider category which is indifferently either matter or consciousness whenever he is trying to define it. In *The Sensory Order* he is unable to refer to one of his basic epistemological categories without at the same time referring to "Ego", "Consciousness", "Mind" or "external world" and "physical world". He is constantly obliged to come back to the relation between being and thinking, matter and mind etc., either indirectly (as in the opening pages of his book), or directly (as in the closing section). Nevertheless, this is the part of empiricism that Hayek accepts. He "only" rejects the part of empiricism that attributes some objectivity to the "events" that provoked experience[3].

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[1] As quoted in V.I. Lenin 1962 p.145 and p.150 respectively.

[2] For a full discussion on that, where many criticisms of Mach and Avenarius by contemporary idealists and materialists are taken into account, see V.I. Lenin 1962 pp.144-153. For a scholarly bourgeois view, see also G. de Ruggiero 1921 pp.51-60. Notice that for de Ruggiero it is clear that critical empiricism reintroduces idealism in epistemology.

[3] Thus, coming close to what de Ruggiero calls absurd irrationalism when criticizing certain currents of empiricist thought (G. de Ruggiero 1921 pp.60-61).

In that sense Hayek is purifying empiricism of remnants of materialism. "According to our theory, the characteristic attributes of the sensory qualities, or the classes into which different events are placed in the process of perception, are not attributes which are possessed by these events and which are in some manner "communicated" to the mind; they are regarded as consisting entirely in the "differentiating" responses of the organism by which the qualitative classification or order of these events is created;" and "Every sensory experience of an event in the external world is therefore likely to possess attributes (...) to which no similar attributes of the external events correspond" (F.A. Hayek 1952a p.166). Here again, we have the two component parts of Hayek's philosophy. First, subjective idealism and the denial of anything objective or independent of experience. Then, thanks to an epistemological inconsistency, we reach agnosticism. The external world exists but we are not in a position to know anything about its nature.

Hayek also rejects the whole line of materialist empiricism (Bacon, Hobbes, Locke et al.). This rejection becomes even more apparent in his social and political theory. The objection to the Lockean principle *nihil est in intellectus quod non antea fuerit in sensu* provides the opportunity for him to develop his theory of pre-sensory experience which is also the answer to Mach. "Sense experience presupposes the existence of a sort of accumulated "knowledge", of an acquired order of the sensory impulses based on past co-occurrence; and this knowledge, although based on (pre-sensory) experience, can never be contradicted by sense experience and will determine the forms of such experiences which are possible" (F.A. Hayek 1952a p.167). Here, once again, Hayek seems to place his thought squarely in the appearance-reality, or form-content problematic. It becomes, thus, obvious that the sovereignty of the formal rational categories remains undisputable. "Given" irrational matter exists only as the content of the systematized form; to the extent that it transcends it, it simply cannot exist for "us". No "communication", no correspondence between the rational form and its irrational content is allowed[1]. This reductionism of matter-out-there into matter as content only leads to a dogmatic overlooking of anything that does, or might, exist

[1] There is, of course, a sharp contradiction between this concept, which practically constitutes the main argument in *The Sensory Order*, and the correspondence theory that Hayek is trying to establish in the very last pages of that work.

apart, either as "metaphysical" or as irrelevant to "our" knowledge. For Hayek, then, the decisive element which determines the importance and the mere existence of the content of experiences is the rational, formal system-order. It is clear that the relation between form and content is a one-way relation. Therefore, the assurance that "experience is not a function of mind or consciousness, but (...) mind and consciousness are rather products of experience"[1], should now be examined under a new perspective. For, by experience is already meant a category wide enough to account for the whole of the construction or the rational system-order. This view is quite close to Oakeshott's skeptical conservatism[2]. Indeed Oakeshott's view is that there is no external harmonizing power which is superimposed on mind. However, in his view it is apparent that he takes mind as superimposing its forms (patterns) on some ambiguous content. The sovereignty, one-sidedness and self-efficiency of formal rational systems is clear enough in Oakeshott. The fact that Hayek uses the ambiguous (because of the potentially materialist interpretation it carries) term "experience" meaning by this exactly the same thing as Oakeshott, certainly does not add to the clarity of his theory. Lenin's criticism that "the word experience on which Machists build their systems, has long served as a shield for idealist systems, and now serves Avenarius and Co for eclectically passing from the idealist position to the materialist position and vice versa" (V.I. Lenin 1962 p.151) is still quite accurate.

We may also note, *en passant*, a contradiction which appears between this definition of mind and consciousness and Hayek's concluding remark, namely that mind is an entity of its own which cannot be reduced to anything else. It is, of course, a contradiction in terms, since Hayek has just defined mind as a product of experience. But it is nothing but a contradiction in terms; Hayek's inner belief is precisely that rational forms are self-sufficient (even in the guise of pre-sensory qualities). If we interpret the above quoted passage in the light of Hayek's concluding remark we will end up with the essence of the theory: an eclecticism in terms which serves as a cover for idealism.

Hayek replaces the concept of the "pure" core of sensations as the primary

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[1] Note again the striking similarity with Mach's concepts.

[2] As cited *supra*.

category of empiricism with that of pre-sensory experience. By pre-sensory experience, Hayek means the building up of a framework according to which all perceptions will be classified and acquire their mental significance. "All that we can perceive is thus determined by the order of sensory qualities which provides the "categories" in terms of which sense experience can alone take place" (F.A. Hayek 1952a p.167). This pre-sensory experience is supposed to be acquired by the "past experience of the individual or the species". In that way, Hayek believes that he has answered to the problem of the primary category of epistemology and, at the same time, dismissed the metaphysical "pure" core of sensations. By implying the concept of species experience, Hayek cannot get away from the problems generated by an individualistic account of experience. "Species" is only used as a synonym for individual or as a mythologized and stylized individual. Hayek's concept of pre-sensory experience, conceived of either individually or on a "species" basis, does not answer the real question: how is this experience to be accounted for? Hayek says: by direct interaction with physical stimuli (F.A. Hayek 1952a chapter V); but, he adds, this experience was not conscious. But if man is capable of acquiring experience through a direct interaction with the external world, then the whole theory of self-determined experience as the only possible one does not stand any longer. In the process of acquiring his first experiences man reflects the external world in his brain in a more or less accurate way. But, Hayek says, this process is not conscious; therefore, we must assume that during the process of the accumulation of pre-sensory experience man does not actually acquire any knowledge of the external world. This part of Hayek's theory faces many criticisms. Some amongst them have already been mentioned in the previous part. Liberals, for example, are unhappy with this naturalistic and mechanistic approach which tends to weaken the sovereignty of consciousness. How is the latter going to keep its sovereignty if it is ousted from the level of ontology and is allowed to appear only after the essential process of the formulation of the "self" has been completed? Hayek, here, breaks completely with the liberal tradition in that he considers the primacy of consciousness to be wholly determined by some previous mechanistic process. To the contrary, he comes closer to Locke's sensualism whereby man is considered as a *tabula rasa* on which pre-sensory experiences are inscribed. It is precisely this crude mechanistic approach

which takes the process of formulation of the "self" as an unbroken continuum of successive systematic classifications of data that liberals[1] disavow. And they seem to be in the right when they point out that there is nothing distinctively "human" about such a process which is equally true for all living beings. The question can be pushed even further in that Hayek's theory is unable to give sufficient grounding to its presupposition that pre-sensory experiences must indeed be unconscious.

Notwithstanding these objections, pre-sensory experience is of capital importance. It actually marks the break of Hayek's epistemology both from positivism and from liberalism[2]. What is interesting, in that respect, is that it does so in a naturalistic and "scientistic" way, rather than by means of an appeal to the "metaphysical" (for example, to the divine), as the "conventional" conservatives are doing. In that respect, again, Hayek's theory resembles Oakeshott's "skeptical" conservatism.

The key to the understanding of Hayek's thought lies again in his rational dualistic approach to the problem of experience. The problem that he faces is that consciousness appears to be an internal part of the body, which emerges and dies with it and at the same time appears to be superimposed on it as a guiding determinative power. The problem, however, taken in abstraction, as an isolated problem of the "self", acquires an objectively unsurpassable status. Thus, Hayek is forced into the naturalistic, mechanistic account of the process of knowledge and being. What he refuses to see is that this dilemma disintegrates once the "body" and consciousness are not considered in isolation, but as the categories that relate the "self" to its totality, as individual within the social being.

Hayek's account of the acquisition of the means of knowledge brings forward - albeit, in an ideologized and false way - the actual situation that predominates in the social and political "order" he is defending. Man is a *tabula rasa* in relation to the experiences he acquires initially. However, knowledge, as well as social activity, can only be accounted for as conscious knowledge and activity[3]. Likewise, in the "Great

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[1] See, for example, M. Forsyth 1988 and R. Aron 1961.

[2] See also E. Miller 1976 p.385.

[3] See also G. de Ruggiero 1927 p.352.

Society" man confronts a reality "made" by himself but not designed; that is, a reality which is alien to him (incomprehensible etc.). He is, at any time, at the mercy of some eternal, superhuman (i.e. supra-individual) "laws"[1]. His activity is limited to the exploitation of the chances that are given to him within those laws. But even in this "activity" he still remains the object rather than the subject of events. Therefore, the only proper domain of individual "activity" in that case appears to be the internal: the awareness of those laws and the awareness of his reactions (desires, beliefs etc.) to the course taken by events separately.

Experience, however, is certainly not conscious in the sense that man does not decide whether he will have such and such experiences in the first place. But this does not tell us anything about the knowability of the world. One must presuppose that the only experience that leads to knowledge is conscious experience, as Hayek does - i.e. the result of the dictations of a "free" will[2] - in order to conclude that the world is not knowable. To the extent, however, that man is capable of reflecting the external world in his brain in a more or less accurate way the latter becomes both objective and knowable *in principle*. That is not to say that the process of reflection is a wholly passive affair[3]. The argument presented here simply maintains that it is an image of the external, objective world that we acquire as a result of experience, rather than a totally subjective self-generated and self-contained interpretation of it, as Hayek maintains[4].

In both cases, however, the theory of pre-sensory experience collapses. Experience is only valid, in so far as it describes the way individuals come to know the world. But to the extent that it is used in order to cover the independence of the category of matter in relation to consciousness and the knowability of the world, it necessarily leads to problems. The fact that Hayek criticizes the concept of the "pure"

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[1] Which are even equated to natural laws.

[2] A presupposition which is false since experience is not conscious in that sense.

[3] For a well-grounded defence of the reflection theory in epistemology, see J. Hoffman 1975 esp. ch.5.

[4] For a materialist interpretation of the process of acquisition of knowledge, see E. Bitsakis 1988. For a further account of the Marxist theory of knowledge, see J. Hoffman 1975.

core of sensations within a subject-object or form-content relation is also clear from his own conclusions. Science, he says, tends to construct an all-comprehensive and self-contained formal model that will reproduce all the relations between the objects (events) of the external world but will not provide us with a correspondence between its parts and the objects of the world. Pre-sensory experience is the basis on which a theory that cuts all remaining linkages between the objective world and our minds is built. "To get beyond phenomena, to reach the inner essence of things (...) all these were regarded by him as attempts to soar our mental atmosphere. His advice was virtually this: (...) Record, group and classify; but recollect that, when you have done so, you have attained the limits of your powers". "The aim of scientific investigation is not (...), the discovery behind the veil of appearance of the nature or the essences of things in themselves". "The aim of science can only be the development of a system of categories or principles, in the end organized wholly deductively, which is adequate to the experience it seeks to order". These two views could easily be thought to originate from the same person; but they are not. In fact they are written with a difference of no less than a whole century. The first is taken from a book on Hume (W. Knight 1886 p.137), the second can be found in Gray's book on Hayek (J. Gray 1986a p.6). The similarity of the descriptions is striking.

10. The Dismissal of Necessity: A Subjectivist Account of Causality

The above discussion brings forward the need for a more thorough examination of the problems of causality and necessity. It must be clear that for Hayek, these categories, being closely connected to epistemology but also transcending it, can never acquire an objective status outside the formal system-order. On the contrary they must be delimited by and exhausted within the activity of the classifying "self". We have already mentioned the inadequacy of Hayek's methodology when he stated that we can derive a "correspondence" between the mental and the "physical" if we prove that the relations between certain mental and other mental events are identical with the relations between the "corresponding" physical and other physical events. This statement surely does not provide us with any criterion of the relation between the

mental and the physical. It can well justify any religious belief. For. example, for ancient Indian tribes two apparently related physical events - namely the gathering of clouds in the sky and rain - were related (or "corresponded") to two mental events equally related to each other, namely the prayers of their priest and the moods of their gods. One may argue that the relations between the mental and the physical are far from being identical. But this argument would be based on the assumption that "our" or the "scientific" account is actually objective and, thus, true while the Indians' is not. The development of science through history can provide us with many more examples. Even if we assume that we know the objective relation between two physical events Hayek does not provide us with any criterion according to which we can compare this relation with a relation between two mental events. Indeed, it is very doubtful if any such criterion exists at all. If the relation between two physical events is objective, then its identical counterpart in the mental order has to be objective too. If the relation in the physical order is unalterable, then the relation in the mental order has to be unalterable as well. One can easily see how profoundly static, and, in fact, irrational such a concept becomes.

In Hayek's theory there is no notion of necessity. On the contrary, nature consists of an infinite sum of semi-self-contained substructures which in their turn consist of an infinite amount of elements[1]. We select among them according to some criteria immanent to our mind. Causality is therefore present as logical causality in the sense that we select this and not that because we believe that it will help us predict certain events that will maintain the structure. Let us now see Mach's opinion on the subject: "The Humean criticism [of the conception of causality] nevertheless remains valid". "Apart from logical necessity no other necessity, for instance physical necessity, exists". "In nature there is neither cause nor effect". "I have repeatedly demonstrated that all forms of the law of causality spring from subjective motives and that there is no necessity for nature to correspond with them"[2]. We see that Hayek's concept is identical to Mach's. And that Mach does not deny that his concept of causality is based on Hume. We also see that for Mach logical and subjective

[1] Another word that Hayek takes from Mach.

[2] As quoted in V.I. Lenin 1962 pp.158-159.

causality are synonyms. The line, thus, is as follows: from Hume to Mach and empiricist agnosticism explicitly; from there to Hayek's agnosticism implicitly.

Furthermore, in nature there is no continuity, no connection "of any significant kind" between different events. How did Hayek end up with this conclusion? From the "evident" fact that if this were not the case we would not be able to predict anything about the physical events[1]. It didn't occur to Hayek that we might be able to predict despite the fact (indeed because of the fact) that the world is a *unified whole* because this is contrary to his theoretical structures. The striking similarity between Hayek's statement "The fact that the world which we know seems wholly an orderly world may thus be merely a result of the method by which we perceive it" and the 19th century empiricist statement "The comprehensive character of natural law is due to the ingenuity of the human mind" and "Man is the maker of natural law"[2] is only a secondary proof that Hayek's theory is at least 70 years old despite the new terminology implied.

Arguing that nature is independent from man-made laws certainly does not imply that it has no laws at all. Nature is ordered according to laws of its own and what we call order, purpose, law are merely words used by man in order to understand the initial existence of nature. This does not mean that these concepts do not have any objective content corresponding to what is happening in nature. It simply means that there is no identity between mind and nature. It also means that these words express reality in a more or less abstract and conventional way. It shows too that in order to understand particular phenomena we must isolate them "arbitrarily", detach them from their natural connection and wholeness and examine their nature, cause, effect etc. The fact that human concepts of law, cause or effect have some objective content can also be asserted in terms of their being products of the human brain which is in turn a product of nature[3].

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[1] So, if reality does not agree with our theory, too bad for reality! In fact, Hayek uses Carnap's formulation according to which it is "a stroke of good luck" that formal rational classification applies to reality (the point is made by Adorno in T. Adorno (et al.) 1976 pp.21-22).

[2] Karl Pearson, as quoted in V.I. Lenin 1962 p.160.

[3] For a full development of the materialist concept, see F. Engels 1947 part 1; for a contemporary Marxist analysis, see J. Hoffman 1975 and E. Bitsakis 1988.

Hayek, on the contrary, implies a subjectivist interpretation of the process of knowing. There is no objective necessity (necessity in nature); necessity exists only in our minds[1]. The deduction of necessity and causality from human reason instead of objective reality distinguishes human reason from nature in an absolute way. This is the real basis of Hayek's "practical" dualism in epistemology. A dualism which is not at all implied only for "practical" reasons as Hayek suggests, but which is the necessary outcome of this distinction. This is also the methodological basis of Hayek's political individualism which, in turn, as we shall see, is much closer to solipsism and agnosticism than to the classical liberal thought. Furthermore, this deduction also ends up submitting nature to the domination of reason, as a part of it, instead of taking reason as a part of nature. That is why Hayek's verbal materialism ("mind is a part of the physical universe") is only an inconsistency in terms of his theory. If we take nature to be as unordered as Hayek believes and if law and order are imposed on nature from the outside, then there is nothing left to prevent any conclusions of religious or mystical character. But if man is a part of nature (as Hayek suggests) and nature is so unordered how could man's mind become able to acquire such a highly ordered structure?

A striking characteristic of Hayek's theory, as we have already mentioned, is the extreme eclecticism through which he is constantly changing places from idealism to verbal materialism and vice versa. Thus, in *The Sensory Order* we read, as a critique to Mach: "(...) by destroying the conception of elementary and constant sensations as ultimate constituents of the world, it [Hayek's theory] restores the necessity of a belief in an objective physical world which is different from that presented to us by our senses" (F.A. Hayek 1952a p.176). This statement might sound quite materialist in the first place. But as we have seen Hayek's theory is an attempt fully to distinguish between what we can learn directly of the existence of the world and what this world really is. In fact, Hayek is rejecting the phrase "what the world really is" altogether. His theory can provide us with no adequate proof for the existence of an objective world. On the contrary, he is constantly trying to prove the

[1] See also S.R. Letwin in F. Machlup 1977 p.152. Letwin clearly states that Hayek attributes both necessity and freedom only to human rationality.

second part of his statement - namely, that what we know about the world is different from what the world is. This latter can only be accepted as an assumption (i.e. mental, "interpretative" activity of the self) which is not based on any direct (sensory or other) communication. In other words, what we see and touch is only a phenomenon which has nothing to do with objectivity. It is a world (order) which depends entirely on our predetermined mental activity. The objective world is something we must assume (with no obvious entitlement...) but something we will never get to know. Literally speaking the above quotation is revealing: Hayek's theory simply restores the external world as a mere belief, a logical activity ("necessity", in Hayek's theory) but not as being.

The total failure of Hayek's theory to demonstrate that there exists something more than the organizing Ego is shown only a few lines after his above-quoted "materialist" statement, when Hayek derives natural order from mental order (F.A. Hayek 1952a p.176). It is therefore surprising to find N. Barry arguing on exactly the opposite lines. In his account of Hayek's subjectivism, Barry seems to miss the point altogether. Thus, he argues that when Hayek says that knowledge is subjective he does not mean that opinions and values cannot be removed from analysis. But if opinions and values could be removed what would it be left after their removal[1]? Surprisingly enough, Barry maintains that it would be the mere facts. This concept, however, contradicts Hayek's approach almost directly. If there were a way of reaching this "pure core" of knowledge, then Hayek's belief that it is impossible to get to know things as such and his whole theory of pre-sensory experience and "maps", would become useless. Barry's argument is based mainly on the second chapter of *The Counter-Revolution of Science* where Hayek is trying, among other things, to draw a distinction between the process of knowledge in the physical as opposed to the social sciences. Barry's understanding of the argument is that in physical sciences truth is independent of what men think of the world since it derives its existence from the objective properties of the material world, whereas, in social sciences, "objectivity" is pointless since these sciences are only interested in human action which is supposed

[1] On that see also Gray's explicit objection. For Hayek, says Gray, we can never acquire a transcendental point of view. Barry seems to adopt the account that Nishiyama gives of the Hayekian methodology, with all the problems that appear in it.

to be due exclusively to mental procedures. Barry's interpretation of the Hayekian thesis suffers from two problems. Firstly, the objectivist character that he ascribes to knowledge of the world, although at least partly correct, simply is not what Hayek believes. Hayek's argument is that the question "is there an objective world?" is meaningless, and that, even if there is such a world, we can never get to know it. Secondly, this all too sharp separation of the objective (facts, natural sciences) and the subjective (values, social sciences) generates the problem of the origin of the subjective[1]. If the relation of man to nature and of man to other men is to be examined simply as a subjective relation based on values and opinions, if causality and necessity are excluded from social sciences, then how can the origin as well as the "nature" of those values and opinions be explained[2]?

But what does Hayek try to prove here? The answer comes in a highly controversial chapter of *The Sensory Order* (F.A. Hayek 1952a chapter V) and especially in the section where Hayek treats the "model-object" relation. It appears again in many parts of his work, for example, in the lecture he gave at the Alpback Symposium (F.A. Hayek 1978 chapter 3). According to Hayek, our knowledge of the environment is based on pre-sensory experience in the first place. That means that the first experience that any organism will have cannot have any direct significance to it. But every occurrence of such experiences will contribute to the formation of a network within which every neuron will acquire a defined place and therefore a distinct significance. When this network becomes complex enough it will become a "map" i.e. a theory of how the world works. The consequent classifications of impulses that will take place in this network will produce the "model" of the order of events that we approach. Thus, the process of getting to know something becomes the process of a "model-building" according to the initial "map". We select among an infinite number of elements which constitute our complex environment the elements which are essential for the prediction of events which are important for the persistence of the structure. It is a matter of "good fortune" that the world consists

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[1] For a further critique of some positivist trends on that matter, see J. Hoffman 1975 esp. pp.189-198.

[2] It is characteristic of that difficulty that in his own examples Barry has to take refuge with the "visitor from another planet" in order to find an "objective" spectator (N. Barry 1979 pp.22-26).

of events not interdependent to any significant degree because otherwise we would not be able to select any isolated small parts of this huge structure, which, as a whole, is too big for us to conceive, and therefore we would not be able to predict anything. This process of selection has certain limits. We can never expect to take into account the whole of the world including ourselves because any model, in order to be conceived, requires another model of higher complexity.

Such is the theory of knowledge that Hayek presents. What we know as Nature is the result of the way our mind is organized. It makes little difference that Hayek presupposes that the initial stimuli are physical; so long as they are physical they are unconscious and therefore they do not play any role to the process of acquiring knowledge. From the moment that we gain consciousness it is not the physical stimulus that we get to know but our theory for it. "Our perceptions are our only objects" said Hume some 200 years ago...

11. Conclusion

It has been the main purpose of this section to attempt to demonstrate the inadequacy of Hayek's philosophical premises. His theory meets both serious problems of inner coherence and overwhelming difficulties when used as an analytical tool in his social theory.

Hayek tries to present a "new" philosophy. He does so by rejecting the basic categories of traditional philosophy as "metaphysics". In this regard, the influence upon him of the "skeptical" philosophy of the 18th century and 19th century empiricism is obvious. His effort may be resumed in three fundamental propositions. Firstly, he rejects ontology as irrelevant to philosophy. Secondly, this leads him to present a "purely" epistemological theory. Purely that is, both in terms of its denial of ontology and in terms of its "scientific" account of the cognitive process. Thirdly and perhaps more importantly, he intends to base his entire system, be it social, economic or political, on the outcomes of this "new" theory of knowledge.

The argument in this section seeks to dispute these propositions both

separately and taken together, as a whole. Hayek's theory is not new in any but the most superficial verbal sense. His denial of ontology cannot stand serious examination since it soon becomes clear that in reality he himself presupposes implicitly some very specific ontological premises. What is more, these premises tend to contradict his verbal attack on rationalism to the extent that they are themselves a variant of Cartesian dualism. His theory, then, is not "purely" epistemological as far as the exclusion of ontology is concerned. But it is not "purely" epistemological in terms of producing a scientific account of the cognitive process either. For, apart from the highly disputable status of Hayek's "scientific" arguments themselves, the theory, were it to be taken at face value, would become untenable basically because of its inability to give an acceptable notion of actuality. Finally, Hayek fails to fulfil the third proposition in that his premises are already problematic and incoherent enough to exclude even the possibility of seriously undertaking the task of basing a social and political theory on them[1]. On that last point however, the whole second section of this part is dedicated.

[1] See also A. Belsey in R. Levitas 1986 p.180.

SECTION B: "Freedom under the Rule of Law": Order and Freedom

1. "Order" and "Rule": The Foundations of Hayek's Political Philosophy

So far, we have commented on Hayek's philosophical principles. We have argued that the Hayekian theory of knowledge lies heavily on two component parts: subjective idealism and positivist agnosticism. This bizarre mixture of agnosticist positivism with subjectivism gives the Hayekian theory its distinct color[1]. An attempt will be made now to examine Hayek's social philosophy. There are two complementary concepts which compose the heart of the theory and they are presented together under the label "freedom under the rule of law". Those concepts will be examined again in the final chapter and an attempt will be made to show their relation to the actual political circumstances that prevail in a capitalist society. In this section the idea of "freedom under the rule of law" will be commented on primarily as a theoretical principle, that is, according to its inner consistency as well as in respect of its compatibility with the rest of Hayek's theory.

One of the key concepts in the discussion of freedom under the rule of law is that of order. Indeed, Hayek dedicated the whole first volume of his *Law, Legislation and Liberty* to the clarification and delimitation of this concept in the field of social theory, as well as to the definition of its function in the problem of liberty[2].

Hayek defines order as "a state of affairs in which a multiplicity of elements of various kinds are so related to each other that we may learn from our acquaintance with some spatial or temporal part of the whole to form correct expectations concerning the rest, or at the least expectations which have a good chance of proving correct"(F.A. Hayek 1973 p.36). There is a profound similarity between this definition - which basically consists of a proposal of how one can get to know an order, rather than what an order is - and the basic methodological proposition, stated in the opening

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[1] Apart from Y. Quiniou's (1989) critique of Hayek's subjectivism, see also W. Jopke (et al.) 1978, chap.3.

[2] For Hayek's account on the importance of order see F.A. Hayek 1973 p.35.

pages of *The Sensory Order* and discussed in the previous part. In *The Sensory Order*, Hayek stated that the question "what is X?" has no meaning as such and that all we can hope to prove is that there exists an overall correspondence between the phenomenal and the physical world. It must be remembered that for Hayek the physical world is orderless as such (no causality or necessity prevailing in its "structure") but can acquire some order as a result of our mental interpretation of it. In that sense, the definition of order should also be understood as a mental construction; furthermore, the idea of causality implied in this definition - i.e. that we can form correct expectations of the whole from our acquaintance with the part - is only meaningful in Hayek's theory, if it refers to a logical process, not a physical one. Causality, it has been argued, has only meaning for Hayek as logical causality and not as objective necessity. Causality in that sense appears again on the level of political philosophy in the discussion of abstract rules of just conduct. On that level the dualism of phenomena and things-out-there appears as a distinction between values (rules of conduct) and facts (actual cases). Hayek again stresses that the relation between facts and values is a "causal" relation. That is, a relation constructed in its totality in our minds[1].

From the definition of order Hayek draws two conclusions. Firstly, every society must possess such an order; secondly, such an order can often exist without having been deliberately created. From that second conclusion Hayek makes the distinction between made and grown orders. Made or constructed orders (exogenous) are the orders which have been deliberately planned by an intellect. Grown orders are what Hayek calls spontaneous orders (endogenous) which have not been deliberately planned.

Unfortunately, Hayek does not prove that order is a necessary element of every society although he states it. What is more, this conclusion cannot be deduced from any of Hayek's previous philosophical statements[2]. It has long been argued by Hayek that the way we form ideas is determined by pre-sensory and sensory experiences. In fact, what we call the world is our sensory - in the wider sense, including pre-sensory

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[1] We shall return to this point later.

[2] See also R. Vernon 1979 pp.64-65.

- order. Accordingly, the application of Hayek's philosophical principles to the formation of social orders can only lead to subjectivism. A society can never be constructed according to one order; it must possess as many orders as the individuals who live in it. There is no evidence in Hayek's philosophical works that could lead to the notion of a unitary perception of society by its members. This brings forward a second point, implicit in the distinction between made and grown orders. In *The Sensory Order* Hayek argued that there is no possible way that human mind can get to know an order in its totality. Consequently, it is impossible to construct one as well. Nevertheless, in his political writings Hayek seems to accept at least the possibility of the existence of a made order[1]. The argument now seems to be: we ought not to construct an order because there is no way we can take into account all its details. This differentiation is not merely quantitative. It now seems that Hayek's attempt is to prove that grown orders are better than made ones. If Hayek was following his initial position - namely, that there is no way we can get to know an order entirely - the conclusion should have been that only grown orders exist. Consequently, the argument would not lie on which order is better but on which order can exist. If no individual mind has the capacity to construct an order in every detail it is obvious that even the most well articulated order will still leave many points uncovered and that these points will follow the evolutionary process that Hayek suggests. So, if we are to follow Hayek's thought, there certainly cannot be any fully planned order[2]. But it also seems that there cannot be any fully grown order either. Hayek's general argument on grown orders is that they are man-made but not man designed. In other words, that those who built them could not foretell the results of

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[1] For a detailed account on that point, see R. Vernon 1979 pp.57-79.

[2] For a consistent development of the necessarily spontaneous or "polycentric" character of all orders, see M. Polanyi's contribution in E. Streissler 1969. Polanyi argues that there is no such thing as a planned economy and, consequently, that all economies are of a "polycentric nature". The same argument is developed in more detail in M. Polanyi 1951 pp. 133-137. Serious reservations can be raised however against Polanyi's argument too. For all his clear statement on that matter, Polanyi's theory, at times, does not escape the trap of arguing for the desirability rather than the necessity of spontaneous orders. Notice also that while he explicitly argues for the mutual exclusibility of spontaneous and deliberate orders in principle (M. Polanyi 1951 p.115) he also suggests that where smaller numbers are involved deliberate orders are not only possible but in fact desirable (M. Polanyi 1951 p.156). Is then society a spontaneous or a deliberate order? For the inadequacy of the Hayekian argument on the possibility of having a designed society, see also C. Kukathas 1989 p.114.

their actions. Because this is due to the implicit inability of the human mind to understand an order in all its dimensions, we can say that it is not only those who built it alone but every human mind that is incapable of understanding the order and foretell its results. This thought has a twofold implication. On the one hand, even in a planned order the planner cannot foretell the results of his own plans[1]. On the other, in a grown order the results might coincide with the individual plans. So, the distinction between made and grown orders looks much milder now. Notice, however, that this view leads inescapably to a sort of justificationism ("what exists is good") of which Hayek has been accused by "friendly" and hostile critics alike. It seems that the only way a social order can be judged is *a posteriori*, according to its results. And even then, the judgement would be only of secondary importance since the crucial question - that is, whether this order is viable or not - will have been answered *de facto*[2]. The advantage that Hayek's position has is that it can present the "free market society" as a qualitatively superior state of affairs and, at the same time, argue that this society is a permanent one. In other words, it tends to bridge the gap between the evolutionary approach that leads inescapably to the conclusion that the "free market society" is only a temporary stage in the process of development of mankind and his initial intention of arguing for it as an eternal and teleologically justified state of affairs. This tension is apparent throughout Hayek's work and acquires its most clear form when Hayek discusses social organization (order) in terms of applied politics.

The first conclusion drawn from the definition of order was that every society possesses an order by necessity. It is Hayek's firm belief that order is not only a necessary characteristic of every society but the supreme concern of all individuals as well (F.A. Hayek 1976 chapter 7). But not any order; only the spontaneous (grown) order which is the characteristic of the Great, Open or Good Society[3]. "(...) the prime

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[1] See also C. Kukathas 1989 p.104.

[2] For some among the many critiques that highlight that point see M.M. Wilhelm 1972 and J. Gray throughout his scholarly study of Hayek's thought. Notice also that from the moment that an order must be politically enforced in order to survive, as Hayek suggests, it can hardly be taken as categorically different from any sort of "designed" order (R. Vernon 1976 p.266).

[3] Always with capital letters, as M. Forsyth (1988 p.244) remarks.

public concern must be directed (...) towards the conditions for the preservation of a spontaneous order (...)" (F.A. Hayek 1976 p.2). Here Hayek uses the distinction he drew earlier in order to justify the qualitative superiority of a certain *kind* of order. Since order is an attribute of all societies but since not all societies were Open, Great or Good he must find a criterion according to which the distinction will be made possible. However, this criterion is not stated in Hayek's works. In fact, it is very doubtful if a criterion exists at all on that basis[1].

So far, Hayek has argued on the idealist path. He has constructed (although he would certainly object to the term) an ideal type of society which corresponds to an ideal type of order. His argument is that we ought to accept that kind of order due to our inability to understand and consequently to construct anything better. Things are getting more difficult when Hayek uses his "restricted" or "system utilitarianism" in order to describe the process of the creation of spontaneous orders as well as to justify them. In reality, it is a mixture of "scientific" positivist concepts combined with a utilitarian terminology that brings about what Gray calls a "natural selection of competitive traditions". Hayek sees our society as a product of a peaceful eliminatory competition between different traditions. Throughout the process of history, different traditions, and the orders resulting from their application, were formed by different groups of people. The rules that constituted these orders prescribed a certain way of life for the members of those groups. Some of the groups survived and prospered and even incorporated members of other groups while others perished. The groups that survived have thus proved the superiority of their way of life and in that way persuaded or simply demonstrated to the others that this is the best way to organize themselves.

It is in this way that Hayek introduces the "scientific" criterion of effectiveness according to which rules and the consequent orders are to be evaluated. This limited utilitarianism, however, imposes some problems concerning inner inconsistency, as in fact any limited utilitarianism does. Hayek's utilitarianism is teleological; he starts from contemporary society, which he considers to be the closest to the ideal, and deductively assumes that since this is the existing society it must be the one that

[1] As Gray, Hamowy *et al.* were quick to point out (see discussion in part I).

adapted best to the changing conditions. It is evident that this way of reasoning can justify almost anything[1]. The crucial question, nevertheless, remains unanswered. What is it that guarantees that the outcomes of this process will coincide with the "Great Society"? Not only is Hayek evading the question, but by criticizing the outcomes of that process at least in so far as it leads to socialism or a "socialist"-contaminated welfare state, he openly undermines his "scientific evolutionism"[2].

For all his efforts to avoid a transcendental justification of the liberal "Great Society", then, Hayek seems in the end to come back to the position from which most defenders of liberalism start. He either has to abandon his views on the "Great Society" and accept an unconditionally conservative justificationism, or he must introduce a criterion from the "outside" (moral, rational etc.) according to which the results of the process will be evaluated. The fact that he does neither explicitly is due to the circumstance that he takes - quite uncritically - the liberal society to be the necessary outcome of the process almost by definition[3]. Pressing the question further, it rapidly transpires that Hayek does indeed introduce a qualitative criterion as well: the outcomes of the evolutionary process are desirable only when they are "spontaneous", that is, when they lead to the "Great Society". This point is overlooked in many critiques which maintain that Hayek seeks to expose all institutions to the challenge of the free market. Thus, what is not taken into account is the fact that for Hayek the order of the "Great Society" is presupposed in the conception of the market; hence, there is no challenge at all[4]. We see here an expression of the same problem of vicious circularity that permeates the whole of Hayek's epistemology and social theory: "scientific" evolutionism is supposed to underpin the social organization of the "free" market society; at the same time, however, this type of social organization is actually *a sine qua non* of the existence

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[1] For example, the existence of socialist states as well as the welfare state in exactly the same terms.

[2] See also G. Walker 1986 p.65.

[3] Thus, R.A. Arnold (1980 p.347) argues that in fact Hayek is not an evolutionist at all. What he refers to is rather a *construction* of a certain type.

[4] Thus, "Hayek's specification of the environment in which the "evolutionary process" is to take place guarantees him efficient outcomes" (R.A. Arnold 1980 p.348).

of social evolution itself. Thus, Hayek's "Great Society" is both the outcome and the necessary presupposition of his evolutionism and *vice versa*. Apart from the obvious problem that this perplexity imposes, namely the possibility of societies being deliberately constructed, it also weakens the initial "evolutionism".

The parallel use of the two arguments brings a certain tension into Hayek's reasoning. On the one hand, we have a version of the well known idealist categorical imperative - we ought to accept the spontaneous order because it is the realization of the ideal and thus a qualitatively superior state of affairs. We do not have the right to compromise for the sake of any material or other advantages. Abstract rules - the backbone of every "Great Society" - are our ultimate values. On the other hand, we have the "scientific" evolutionary argument, a totally moral-free way of proving the superiority of our society - the application of an ontology-free method. Spontaneous order is the best because it is the most effective sort of order. This means that order is valued as a more or less adequate tool that enables us to reach the ultimate aim, that is, to adapt and survive[1].

The problem, then, is that spontaneous order is presented both as an idealist ultimate value and as a utilitarian device. Hayek's answer to this difficulty seems to be that although abstract rules are merely instruments of classification that reflect our ignorance we must treat them as ultimate values. "This means that though these rules ultimately serve particular (though mostly unknown) ends, they will do so only if they are treated not as means but as ultimate values (...)." (F.A. Hayek 1976 p.17). This attempt to overcome the tension between idealism and positivism in political philosophy is the crucial point in Hayek's social theory. The question that suggests itself here is why do we have to create ultimate values if they do not exist? This point separates Hayek from positivism, as well as from empiricism, quite dramatically. In fact, it is the only innovation that Hayek brings in political philosophy. The positivist ideas of an ideology-free social and political theory that prevailed in the capitalist world for a great part of the 20th century appear no less hostile to Hayek than does socialism. Hayek's intention is to "prove" in a "scientific" way the

[1] Hayek argues explicitly for the instrumental value of the rules of law in many parts of his work (notably in F.A. Hayek 1976). On that point, see also G. Walker 1986 p.14.

superiority of a certain *conception* of social organization. That this was his intention became clear ever since he published *The Road to Serfdom*. But both in that book and in *The Sensory Order* his theory was presented mainly as antisocialist and as antimaterialist respectively while in his later works he seems to be equally hostile to all "neutral" social theories as well. Hayek's view on this score is that positivism in philosophy and in legal theory as well as political pragmatism lead to socialism. This might look quite far reaching[1]; but it is a fact that, historically speaking, positivism and pragmatism have proved compatible with forms of social organization that Hayek rejects (the welfare state being the most comprehensive of them all). Thus, it can be suggested that Hayek's massive attack on "neutral" social theories and the consequent re-ideologicalization of political philosophy constitutes the response of bourgeois thinking to the dead end (both economic and political, moral etc.) that capitalism was facing by the beginning of the 1970s[2]. Hayek's own arguments seem to point in that direction as well. If one ignores the label "socialism"[3] that Hayek attaches to a huge variety of fundamentally different opinions, one will see that the major part of his attack is not merely directed against the practices existing in the socialist countries but against those concepts and practices that prevailed during the growth of the welfare

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[1] Barry, for example, thinks that the opinion that the welfare state is bound to lead to socialism and totalitarianism "seems more than a little extravagant" (N. Barry 1979 p.117). Also see N. Bosanquet "(...) it is even more difficult to understand why Hayek thinks that "socialists" have been responsible for the growth of the welfare state. The role of such conservatives as Bismark is not discussed." (N. Bosanquet 1983 p.35).

[2] In that sense, "The introduction of the idea into social phenomena by Professor Hayek marks in fact a reaction against the prevailing cartesianism of our time which has also invaded the social studies." (A.H. Murray 1945 p.153). The argument that Hayek's theory (as a part of the general school of thought of monetarism) is in fact an ideological response to the legitimacy crisis of the capitalist state is also advanced in S. Clarke 1987.

[3] Indeed, Hayek seems to have a unique concept as to what (and who) constitutes socialism. He has been widely criticized for attributing the "accusation" of socialism to all but socialist theorists, as well as, for rejecting from the liberal tradition some of its most important forerunners. It has been suggested that this is due to Hayek's eclecticist approach which aims at establishing his theory as the only "natural" heir of liberalism. In order to do so, Hayek is obliged to reject a huge part of liberalism and to incorporate an equally important part of theories, the liberal origin of which is a matter of debate, to say the least. For a critique from a liberal point of view, see R. Harrod 1972 pp.293-301. For a detailed critique focusing on the exclusion of the 19th century utilitarianism from liberalism, see Robbins 1961 pp.66-81.

state[1]. In theory, it is basically the ideas of the golden age of technology and of the neutrality of the state that Hayek criticizes. It is the idea that if politics is divorced from ideologies and left to "neutral" technocrats, things would improve rapidly. In politics it is above all the "collectivist" tendencies that prevailed among people leading them to get organized in trade unions and develop a concept of social justice that Hayek rejects[2]. This interpretation of Hayek's suggests an explanation for his relative "underestimation" before the beginning of the 1970s. It is only after the massive disillusionment of the late 1960s and early 1970s that Hayek's theory was given extensive attention. It also offers an explanation for the aggressive character of the theory. According to Hayek the reason why the welfare state collapsed (apart from its theoretical mistakes) was because it promoted the instincts that were hidden in ordinary people - such as social justice and collective organizations and actions - from the times of tribal societies onwards. His theory, in opposition to this, aims at fighting those instincts and at either persuading people to reject them or forcing them to do so.

The adoption of abstract rules as ultimate values creates some problems of inconsistency in Hayek's theory as well. If we accept the theory of the natural selection of competitive traditions as valid, then the conclusion should be that in the process of the development of human societies the most effective rules survived and created the "Great Society". If the process of selection is "natural"[3], if only the best, i.e. the most effective rules survive, why do we have to treat them as something different than what they really are, that is, tools for the achievement of our ends? Hayek's answer to this is that "the Great Society will not function or maintain itself" unless we do so. The rules of a "Great Society" will serve their purpose only if we treat them as ultimate ends. But then where is that blind, unpredictable, unconscious, unknowable, abstract natural process that leads to the "Great Society"? Is it just

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[1] Barry suggests that the main reasons why Hayek's theory has become the centre of interest today are both that economic liberalism is "Perhaps the most significant intellectual movement in the current revival of political philosophy" and "the apparent breakdown of the postwar consensus on economic and social policy." (N. Barry 1979 p.1 and p.3). It is precisely this "end of ideologies" theses that Hayek rejected right from the beginning. Also N. Barry 1987 chapter 1, "Against Consensus".

[2] For a similar concept P. Dunleavy and B. O' Leary 1987 pp.132-3 and N. O' Sullivan 1989 p.7.

[3] A kind of continuous "evolutionary filtering" as Gray suggests (J. Gray 1986a p.34).

man's conscious decision to submit to certain principles[1]? This contradiction is made even more obvious when Hayek suggests "practical" solutions to the problems of our society (M. Forsyth 1988)[2]. Ever since *The Sensory Order* Hayek has been trying to prove that both human beings and societies (orders) follow an unconscious evolutionary process in which only the most capably adapting will survive. At the same time, his social theory tends to reject the actual results of this evolution on morally imperative grounds. Hence, when he rejects certain parts of our actual society, he does so only to introduce imperatives according to which our society will become ideal. For example, his "Model Constitution" amazingly ascribes the right people to the right places so that the right rules will be produced[3]. There is a double paradox in this proposal. Firstly, if we follow Hayek's principles this "constructivist" proposal could not (and certainly should not) take place at all[4]. For, it is Hayek's explicit belief that the human mind cannot grasp the outcomes of the evolutionary process that takes place in society. His proposals, however, presuppose not only the ability to understand the alleged incomprehensible social processes but also a further ability to organize them rationally. Secondly, even if Hayek could escape the fate of mankind, even if he could be in a position to understand and consequently to suggest ways in which a "Great Society" might be realized, there should not be any need to do so. Spontaneous orders should take care of that through the evolutionary infiltration of traditions. After all, they are spontaneous precisely because they do not

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[1] In that sense, "the socio-economic patterns can be said to require certain political practices only because they *depend* on such practices; and if they depend on such practices, the view that they constitute a "spontaneous" order becomes questionable" (R. Vernon 1976 p.266).

[2] In that sense, "The prophet of spontaneous orders would appear to have fallen for the attractions of paper schemes" (N. Bosanquet 1983 p.36).

[3] For a similar concept, see also J. Gray's "The Road to Serfdom: Forty Years On" (in The Institute of Economic Affairs 1984). Gray brings forward a series of practical political propositions in order to promote a neoliberal "spontaneous" order. He even speaks for the necessity of "producing a new generation of journalists" to win the battle of ideas pp.41-43. But, see the more "practical" view of N. Barry's who rejects the opinion that the victory of neoliberalism depends on winning the battle of ideas, in "Ideas versus Interests" (in The Institute of Economic Affairs 1984).

[4] Thus, "The proposing and applying of constitutions may rightly be seen as a schematic utopianism, and one properly suspect for its abstractions of tangible realities and its rationalistic formalism and controls" (K. Widmer 1981 p.9). Widmer's argument is that utopian thinking and consrtuctivism is an important part of the Hayekian thought as well as of the whole liberal tradition (1981 pp.5-62, especially pp.8-10).

have a need for the "right" people to make them happen[1].

2."Law": Facts, Values and Subjectivism

Having discussed Hayek's concept of order and rule an attempt can be made to describe his account of the idea of law. It can be said that, for Hayek, law is the corpus of abstract rules prevailing in a certain order and being responsible for its function and maintenance. In that sense, the character as well as the form of law is determined by the corresponding character and form of the rules prevailing in a certain order. A rule in order to exist does not need to be articulated: "such rules might in a sense not be known and still have to be discovered because from "knowing how" to act, or from being able to recognize that the acts of another did or did not conform to accepted practices it is still a long way to being able to state such rules in words" (F.A. Hayek 1973 p.72). Law, in the sense of enforced rules, is coeval with society[2] and thus prior to legislation. Its main feature is that it does not require any conscious knowledge; rather it is the kind of tacit or implicit knowledge that Hayek has described in *The Sensory Order* and *The Counter-Revolution of Science*, that law needs. Nevertheless, law became articulated (at least up to a point) in the process of human history. This articulation had two different effects on the concept of law. During and because of the articulation itself the rules underwent some changes. But while these changes were by no means so important as to permit us to talk about different, purely intelligently constructed rules the concept that law is man-designed as well as man-made prevailed in our society. Nevertheless, the fact is that rules are not created; they pre-exist and they are waiting to be discovered. This is even true

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[1] On this contradiction, especially as it appears on the matter of law, see also J. Gray 1986a p.69. It should be taken for granted that, since Gray is a favorable critic of Hayek's, he sees no contradiction but only a "fascinating tension"; nevertheless, he seems to capture the general outline of the problem quite adequately. See also N. Barry "Ideas versus Interests" (in The Institute of Economic Affairs 1984) where he poses the question: But what if spontaneous evolution produces not the order of classical liberalism but the stagnant immobile societies? Barry concludes that Hayek's attack on rationality can produce a dead end and even subvert the validity of the theory. On that, see also L. Robbins 1961 p.70.

[2] For a discussion of this concept, see part III.

when the legislator is called to formulate rules on which nobody has acted before.

So far, Hayek has tried to justify his ideas on the articulation of law only indirectly. The effectiveness criterion implied now leads him into one of the most important parts of his theory, that of the distinction in the field of political philosophy between ends and means and its projection in morals as the distinction between facts and values. Thus, he argues that there is no real difference between factual and normative rules on the ground that "To the primitive mind no clear distinction exists between the only way in which particular results can be achieved and the way in which it ought to be achieved" (F.A. Hayek 1973 p.80). But, since "from a statement of fact alone no statements about appropriate, desirable or expected action not any decision about whether to act at all can be derived" (F.A. Hayek 1973 p.80) and since action is not caused by facts but by our desire to achieve some preconceived ends, it follows that in the case of the primitive mind the desired end will be achieved in the only way available. The problem arises when more than one way is available. In that case and since the "desired end is included in the premises all sorts of normative rules may derive from them" (F.A. Hayek 1973 p.80). This point is decisive for the understanding of Hayek's theory. Its importance is also stressed by Hayek himself when he argues that it is only possible to understand his account of the rule of law when one has accepted the distinction between facts and values[1].

The first point to be raised on this score is Hayek's denial of causality in social theory. His denial of causality in ontology and in the theory of knowledge has been discussed in the previous section of this part. It has also been argued that the outcomes of this denial in the field of social theory and politics lead Hayek to solipsism[2]. The distinction between facts and values serves as a confirmation of this view. Facts, according to Hayek, can never be the cause of man's actions. By implication, "Since choice in action arises from ideas, the study of society is the study of phenomena formed by subjective ideas"(!) (A. Shenfield in F. Machlup 1977 p.67).

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[1] See also F.A. Hayek 1973 p.112 and 1978 pp.297-299.

[2] For a defence of Hayek's concept see N. Barry 1979 chapter 2. But even Barry, at times, feels uneasiness in defending all Hayekian positions. In that sense, he argues "It is undoubtedly true that *mere* observation is not adequate to explain much of social phenomena." "But at times Hayek simply asserts as a metaphysical dogma that there is no such thing as objective data (...)" "Outside economics and law subjectivism might reduce everything to uninteresting explanations." (N. Barry 1979 p.26).

The real cause of action for Hayek then, lies only within the human intellect[1]. Only when mind produces some desirable ends can it be expected that an action will take place. Therefore, there is no causal relation between reality (facts) and human actions. Causality is again perceived as a logical function of the mind. That is, it is perceived as a relation between intelligently produced ends and intelligently selected ways of achieving them. But this conception is not simply an abstract idealist one. It is also a voluntaristic conception. Not only does it cut human desires (ends) off from reality; it also suggests that they are compatible with all sorts of subjectively conceived normative rules once they have been taken into account before-hand, that is, as parts of the premises. The two compulsory conclusions derived from the above tension of argument are firstly, human desires are irrelevant to reality; they are completely subjective and therefore it is impossible for anybody to predict them. Secondly, the actions that will be performed in order to achieve those ends are likewise dependent on the wills of all individuals. After all his arbitrary reductions of reality to human will and mind Hayek is left with only one possible conclusion: nothing can be said about the ends of others and nothing can be said about the ways in which they will try to achieve them. In fact, it is quite doubtful if Hayek has the right to assume that "others" exist at all.

Notwithstanding these problems Hayek manages to produce a whole social theory from such presuppositions[2]. "The reason why all the individual members of a group do particular things in a particular way will thus often not be that only in this way they will achieve what they intend, but that only if they act in this manner will that order of the group be preserved within which their individual actions are likely to be successful" (F.A. Hayek 1973 p.80). So, not only is it a fact that people act in the same way under similar circumstances but there is also a rational justification for that (apart from simple empirical observation). But, how did Hayek reach that conclusion? In the first place, it is highly improbable that people will do particular things in a particular (same) way because, according to Hayek, there is no logical possibility of assuming that they have the same ends. But, even if they did, it would

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[1] See also F.A. Hayek 1949 p.59 and p.71.

[2] Even causing G. Walker to characterize him as an "objectivist" in morals (G. Walker 1986 p.36)

not automatically follow that they should try to achieve them in the same way, since for one end there is an infinite number of subjective normative rules. Hayek reached his conclusion by introducing two "new" parameters in his theory. In every case, he says, there are ways of acting which are more effective than others. These ways will be chosen by those who wish to reach a particular end. And, the effectiveness of a certain way of action will be judged both according to whether one can reach the desired end and according to whether this way of acting is conducive or not conducive to the maintenance of an overall order. The problem that appears in this view, primarily, is that it simply cannot account for a concrete social situation[1].

It is true that normative principles appear to acquire some independence at a certain stage of development of society. However, it would be superficial both to delimit this relation to that stage only and to make it absolute by counterpoising its abstracted poles. Hayek's empiricist approach allows him to "explain" the origin of the relation between ends and means or facts and values in purely quantitative terms. In the beginning there was one way of doing something; thus, there could be no contradiction. When alternative ways emerged, normative considerations emerged as well. Thus, by creating an unbridgeable gap between ends and means, facts and values, Hayek remains unable to explain the historical development of society. The relation that bears the importance, in terms of social philosophy, however, is not one between ignorance and knowledge but that of knowledge itself conceived historically. The fact that, when only one way of doing something is known, no discussion on alternatives can take place, is completely irrelevant to Hayek's conclusion - i.e. the absolute distinction between facts and values. Moreover, this conclusion seems to presuppose that the desirability of an end might exist independently of the desiring subject. For, if the desirability of an end is determined by prior normative considerations, then it is clear that ethical questions have already been answered before the desirability is established. At the same time, however, every normative consideration must have some concrete content, if only indirectly and implicitly. In that sense, one can establish normative considerations only on the basis of one's actual

[1] C. Kukathas generalizes the same point by arguing that this is the source of the "inadequacies of liberal individualism as moral theory and political doctrine" (C. Kukathas 1989 p.108).

existence, that is, on the basis of the totality of one's social relations. It is evident that, according to Hayek's absolute distinction of ends and means, the alleged interchangeability of the determinative roles of the two antagonistic poles of the relation can be extended to the infinite, thus producing a vicious circle.

In reality, Hayek has assumed the independence of the normative "rules of conduct" long before counterpoising them explicitly to factual ones. It is the isolation and consequent mystification of the "statement of fact" and its presentation as an abstract static objectivity that gives him the opportunity to do so. In the first place, Hayek ignores the inseparable coexistence, in the determination of man's existence, of social reality and personal decision. Then, he further isolates the content of the latter by conceiving of it as determined by correct or incorrect "pure" knowledge alone[1]. In that sense, he cannot see that the desired end, the posited goal, must always be the result of alternatives posed by the subject and society together.

There are two levels on which Hayek's concept could be criticized. The first is whether the complementing of agnosticism and solipsism with some "objective" categories produces any better overall results; and the second is whether Hayek has the logical "right" to complete his theory the way he does.

Starting from the second, it should be pointed out that the use of "objective" categories seems somehow strange in Hayek's theory. By "objective" should be understood, in this connection, categories that are applicable to everybody. Such is the use of effectiveness as a criterion of man's actions. It is obvious that effectiveness is a much too abstract concept to be taken as a concrete criterion and that much, if not everything, depends on the meaning it can acquire. This is even more true when one comes to judge normative rules - that is moral principles - by it. Hayek deliberately avoids clarifying what he believes effectiveness means. The criterion he suggests, namely whether a rule promotes the survival and success of the individual, is in its essence a tautology. Effective is something that has effective results[2]. Therefore, he needs a further category in reference to which effectiveness can acquire some concrete

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[1] That is, as formal quantifiable data.

[2] Thus, "The survival of an institution cannot of itself be evidence of its efficiency or usefulness in any but a trivial (or perhaps tautological) sense." (N. Barry in The Institute of Economic Affairs 1984 pp.61-62).

meaning. This category is the concept of the maintenance of the order. Now effective is defined in two ways, as what promotes individual ends - a too abstract definition - and as what maintains an overall order. Obviously the second definition is much more concrete but it remains all the same arbitrary. The starting point of Hayek is that not only the individual desires (ends) are unknown but that since they depend totally on subjective mental functions (that is, since they are totally irrelevant to actual facts and conditions) there is no possible way that we can make any statement concerning them. But now, all of a sudden Hayek not only makes a statement but he also gives a shape and a concrete content to those desires: individuals act in the most effective way possible in order to maintain an overall order. How is this "objective" desire to be justified? Because in that order individual actions are likely to be successful. But in that case, it is the form of the order, that is, a factual state of affairs, that determines the actions of the individuals and not a mystical subjective mental procedure.

Thus, when H. H. Gissurarson argues that Hayek adopts a Berlinian critical view according to which, if freedom "is simply not to be prevented by other persons from doing whatever one wishes, then one of the ways of attaining such freedom is by extinguishing one's wishes" (I. Berlin 1969 p.XXXVIII) he misses the point. For, it is precisely the example of the "contented slave" that Hayekian individualistic voluntarism is unable to answer. If Hayek were to present a position where the concept of liberty would be a fixed idea towards which each individual should strive, the spontaneity of the development of society would be subverted. Furthermore, the core of the superiority of Hayek's theory, its very "openness" - namely, that it does not prescribe any ready-made solutions on the question of freedom, but rather safeguards the conditions in which each person can individually pursue his/her ends - would disappear. The introduction of some kind of false or misguided consciousness - i.e. the position that only some individuals have the ability to understand and consequently to pursue their interests - is an open contradiction in Hayek's theory[1].

But does the admission of "objective" categories improve Hayek's theory at

[1] H. H. Gissurarson in The Institute of Economic Affairs 1984 p.16, as well as, the whole chapter "Unnoticed loss of liberty". For a supportive view to the argument presented here, see R. Hamowy 1978 p.288 were Hayek is accused of being unable to answer the contented slave "paradox".

all? What it certainly does is inscribe Hayek in the category of conservative philosophers. Not only is Hayek formally a conservative, since he accepts all the basic principles of conservatism; he also is essentially conservative too. The preservation of an order - but not of any order, as we have seen, only of the spontaneous order of the "Great Society" which happens to be identical with capitalism in its most aggressive form - rooted in a profound negation of reason, is elevated to the supreme value of Hayekian theory.

Many critics support the view that Hayek is in fact a conservative[1]. For most of them however conservatism is to be understood, according to certain formalistic characteristics, as a totally different (even opposed) trend of thought from liberalism. Thus, when arguing that Hayek is a conservative they, at the same time, try to distance his thought from liberalism. N. Barry however, comes close to the essentially conservative core of Hayek's theory when in a discussion of the similarities (and differences) between the two traditions, he maintains that today there is much more in common than the traditional "enemy" - i.e. socialism. In fact there is a common attitude towards "politics, society, property, justice and albeit to a lesser extent, the state." (N. Barry 1987 p.87). Antirationalism has now become a common element between conservatives and neoliberals. The spontaneous development of societies, the main "new" contribution of neoliberalism in social and economic theory, "is in fact an old conservative idea" (N. Barry 1987 p.88). Skepticism, and the belief that because of our ignorance "there is an implicit commitment to the preservation of traditional practices and procedures" (N. Barry 1987 p.88), is an argument that derives from Hume who is the intellectual forbearer of both doctrines. Even the evolutionary approach that Hayek introduces is only another form of the conservative understanding of society in terms of organic growth (N. Barry 1987 p.90). Anti-egalitarianism and

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[1] For example, see the sympathetic commentator K.I. Vaughn "The Constitution of Liberty from an Evolutionary Perspective" in The Institute of Economic Affairs 1984 p.125; also, N. Bosanquet 1983 p.33 and p.35 where Bosanquet comments on the "uneasy" postscript of the *Constitution of Liberty*. Even G.C. Roche III feels that one cannot dismiss the label "conservatism" from Hayek's theory easily; he therefore proposes to face the problem as a result of possible semantic confusion (G.C. Roche III in F. Machlup 1977 pp.7-9). Another "friendly" critique comes from R. Harrod. In his essay "Professor Hayek on Individualism" Harrod argues that "What Professor Hayek seems to be doing here is roughing in a philosophical defence not of individualism but of the best type of conservatism" (R. Harrod 1972 p.297).

the importance of family and, of course, of private property are also the main features in both doctrines (N. Barry 1987 pp.90-91)[1]. Barry's overall argument seems to be that there is a mutual infiltration of conservatism into neoliberalism and *vice versa.* It is according to this notion that the label of conservatism acquires predominant significance for Hayek's theory. For, it is the apology for the principles of capitalism that constitutes the essence of his theory as well as the cause of its unity. Perhaps Hayek's own concluding comment in *The Constitution of Liberty* can be interpreted as a similar proposition[2]. "In that sense I doubt whether there can be such a thing as a conservative political philosophy. Conservatism may often be a useful practical maxim, but it does not give us any guiding principles which can influence long-range developments" (F.A. Hayek 1960 p.441).

3. Freedom under the Rule of Law: The Question of Ultimate Values

Having discussed the concept of law as it appears through the complementary concepts of order and rule we may now approach the concept of freedom under the rule of law. The first task is to try to locate the position of that concept in the Hayekian system. It seems that there is a widespread variety of opinions as to what really constitutes Hayek's ultimate social and political values. The two mutually antagonistic poles in this theory, evolutionism and voluntarism, give rise to different interpretations. Thus, for example, Hayek is presented as primarily an advocate of freedom in the liberal sense by R. Atkinson[3]. This also seems to be the opinion advanced in *The New Enlightenment*[4], a highly controversial book where Hayek himself emphasizes in an interview the evolutionary and traditional aspect of his theory. N. Barry is a good example of a puzzled scholar. In *Hayek's Social and*

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[1] On this point see also B. Girvin 1988.

[2] Although Hayek obviously thinks that it is only conservatism that has been absorbed into liberalism.

[3] R. Atkinson 1988.

[4] D. Graham and P. Clarke 1986.

Economic Philosophy, liberty is considered as "the centre of gravity" of Hayek's thought. A few pages later, however, he reintroduces the question of whether liberty is a value in itself or whether it depends on other things. The answer "Hayek holds both these views" and "But although he does say that freedom is an important moral value irrespective of its consequences his main emphasis is on it being essential for his theory of progress and his theory of acquisition of knowledge" (N. Barry 1979 p.67) does not seem to clarify the problem[1]. A different opinion takes Hayek to be defending "liberty as the supreme good, a rights-based ethical tradition" as well as "markets as discovery mechanisms and as information devices" which brings him to regard the "maximization of knowledge" (in the sense of data) as the supreme value[2]. Hayek's concept of freedom is also the key concept on which R. Norman's criticism is founded[3]. It seems thus that the view that "Hayek is not precise as to the place of individual liberty in the structure of values of his social system" (P.W. Dyer and R. Harrison Hickman 1979 p.389) almost suggests itself. In Gray's book (J. Gray 1986a) the two tendencies are presented with almost equal weight and are left totally uncriticized. Thus, Gray believes that the spontaneous order as it emerges through the evolutionary concept is one of the two basic ideas of Hayek. The other is freedom under the rule of law; but when the question "How then does the idea of spontaneous order strengthen the case of liberty?" arises he is unable to give a satisfactory answer[4].

Hayek's own testimony as to what is to be considered as the ultimate value of his theory is not helpful at all. In *The Road to Serfdom*, Hayek claims that freedom is the ultimate value. But by freedom Hayek there means freedom of economic activity, not freedom under the rule of law irrespective of the commands of the latter, and it is precisely because of that meaning that freedom is contrasted to democracy

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[1] Also N. Barry 1987 p.50 and p.63 where he considers the two component parts (efficiency and liberty) as holding independently to each other.

[2] P. Dunleavy and B. O' Leary 1987.

[3] R. Norman 1987.

[4] *En passant*, we must note that Gray's question is not correct because it presupposes: a) that there is a relation between spontaneous order and liberty, and b) because as it is phrased it gives to liberty the status of an ultimate value - a status that Gray has not admitted throughout his book.

in that paragraph (F.A. Hayek 1944). In *The Constitution of Liberty*, Hayek apparently takes freedom as the basic concept of his analysis. But it is here that a peculiar content of freedom first appears clearly: "Whether he is free or not does not depend on the range of choice but on whether he can expect to shape his course of action in accordance with the present intentions (...)" (F.A. Hayek 1960 p.13). The second chapter of the book gives a detailed account of the "selective elimination" of traditions and underlines the fact that "the case for individual freedom rests chiefly on the recognition of the inevitable ignorance of all of us concerning a great many of the factors on which the achievement of our ends and welfare depends" (F.A. Hayek 1960 p.29). Now liberty has ceased to be a value *per se* and has become an outcome of the evolutionary process that mankind follows and a device leading to "the achievement of our ends and welfare". It seems then that individual liberty is a concept shaped for "rule following-animals" (C. Kukathas 1989 p. 90). Furthermore Hayek states that "Liberty is essential in order to leave room for the unforeseeable and unpredictable; we want it because we have learnt to expect from it the opportunity of realizing many of our aims" (F.A. Hayek 1960 p.29). Here the utilitarian approach is even more clear. Finally, in *Law Legislation and Liberty*, Vol. II, Hayek suggests that abstract rules must be treated as if they were ultimate ends because it is only through such a universalized statement that we can guarantee the preservation of an abstract order. "(...) a timeless purpose which will continue to assist the individuals in the pursuit of their temporary and still unknown aims" (F.A. Hayek 1976 p.17). Again Hayek is using the rule of law, "the science of liberty" (F.A. Hayek 1960 p.148), in a utilitarian sense. The subjectivist relativist approach, the unknown individual aims and welfare appear here as the real ultimate ends.

It, therefore, comes hardly as a surprise to find most of the liberals and libertarians attacking Hayek on this point. What they all object to is the attempt to construct a liberal social and political theory without preconceived normative premises. The essence of their objection also delimits the field in which the liberal critique can take place. At the best, they attack Hayek's unconfessed return to normativism as a methodological inconsistency. Nobody, however, seems to understand that Hayek is, indeed troubled by the transcendental essence of normative values in liberalism. That is why he tries to derive normative values from his positivist and empiricist

methodology. His failure to do so, along with his critics' failure even to be puzzled by his attempt, can be interpreted as a *de facto* weakness of liberal ideology as regards a transcendental foundation for its values[1].

What can we make out of the perplexed ideas on the ultimate ends of Hayek's theory? Our opinion is that Hayek's chief concern is "freedom" but not in the classical liberal sense. Not as a civil or political or even social value, but as a market value. That is, Hayek believes that the ultimate end is economic "freedom"[2] or the ability to act without constraints within a given capitalist society[3]. It is a characteristic of all critics of Hayek that whenever they discuss the problem of liberty they feel obliged to relate it to the existing or proposed economic order (either as "catalaxy", or as a market society). Not that there is anything wrong with the view that economic freedom is an important aspect of liberty, according to the liberals themselves[4]. Private property was, of course, always at the centre of bourgeois philosophy[5]. What however has changed in its more modern advocacies, is that it has become the centre itself, even verbally. It is now presented as the only important value in social theory thus reflecting the legitimacy crisis of the system. It is also characteristic of the peculiar (by liberal standards) Hayekian concept of freedom that when one tries to discuss it as a social value - i.e. as a value which is related to but not fully determined by the economic order - one will soon end up in unsurpassable

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[1] G. Walker is a good example on that matter. Although he recognizes Hayek's conscious attempt to avoid a transcendental foundation of his political theory and although he further perceives that this leads to an unavoidable contradiction between philosophical premises and political aims, he still insists that the problem with Hayek's theory is that "he lacks any objectively valid, self-evident "good" in which to anchor his system of ethics" (G. Walker 1986 p.59, also p.50). For an analytical account on the tendencies on that matter within the libertarian camp, see D. Gordon 1981 pp.7-35.

[2] See also R. Levitas in R. Levitas 1986 p.91.

[3] Thus, "Free, that is in Dr. Hayek's sense, i.e. competitive and individualist" (G.L. Arnold 1960 p.101). See also S. Brittan's view according to which Hayek (and the New Right) is sympathetic to freedom only in the economic sphere (S. Brittan 1980 p.32).

[4] For example, see J. Gray 1986b pp.62-72.

[5] Notice the identity of opinion between liberals, libertarians and conservatives on this matter.

contradictions[1]. This concept, thus, accommodates the abstract idea of freedom with the (equally abstract) ideas of survival or development that many scholars tend to regard as Hayek's ultimate values. For, it is neither survival nor freedom as such that Hayek advocates; rather it is the survival of concrete capitalist society and the achievement of a concrete economic "freedom" that he places at the top of his structure of values.

It must be remembered that this conclusion is not reached by directly reflecting on Hayek's reasoning but by interpreting the dead end that Hayek's theory is leading to, if examined as a typical liberal one. In that sense, we must not seek, in Hayek's writings, any direct proofs assuring our conclusion. Rather, what must be sought are some hints that might permit us to formulate such a conclusion. Therefore, it is the overall character of Hayek's approach that provides us with the best confirmation here. It is true that Hayek does not provide us with any clear landmark as to where existing ends and the desirable order begins. On the one hand, he continually describes our society as Great and Free, our civilization as the ultimate one possible, our legal framework as the law of freedom; on the other hand, he constantly criticizes it for having entered the path which leads to socialism and destruction, thus implying that it is not Ideal any more[2]. Consequently, it can be assumed that there is another form of social organization higher than ours. This mixing of the existing with the desirable is not accidental. Hayek is constantly shifting places between what is and what ought to be, because his aim is to defend the foundations of the existing society efficiently. That may sound like a paradox, if we face capitalism as a static socio-economic formation. After all, it is a fact that we are living in a capitalist society and therefore the evolutionist approach would be enough to justify it: after a long process of eliminatory selection we ended up with the society most able to adapt, the qualitatively superior - i.e. capitalism. That might describe Hayek's general approach up to a point but it certainly does not exhaust the whole problem. For, a consistent

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[1] In that sense, Hayek's discussion of freedom "not only must start from the premise that members of a society have only property claims on and property obligations to their fellow members in the legitimate area of political relations but must also presume that it is incumbent on all of us to accept the same premise as a categorical one." (J. Viner 1961 p.233). For a further discussion of freedom in the "Great Society", see part III.

[2] Thus, his theory becomes at a time both descriptive and prescriptive (G. Walker 1986 p.63)

evolutionism that would lead to "what exists is good" can hardly constitute a solid basis for a political proposal aiming at influencing actual social relations in a concrete society. Evolutionism can be used in order to confirm the superiority of capitalism as a whole, but its adequacy becomes questionable when it comes to accounting for the concrete social relations which take place within this general frame at a particular historical time. It is precisely this problem that Hayek's imperatives undertake to solve. Their role is to act as the measure against which actual social relations are to be evaluated. Notice that this is only another expression of the (already criticized) circularity in Hayek's arguments: the "right" imperatives emerge as natural outcomes of the evolutionary approach that Hayek proposes. All other social values that happen to exist in a concrete society are dismissed as remnants of the ideals that prevailed in earlier social formations. At the same time, however, the imperatives that Hayek advocates become also the actual presuppositions of evolutionism itself in the absence of which the "Great Society" will decline. It is only in those societies where Hayek's imperatives have already established themselves, that evolutionism is allowed to take place. Thus, Hayek's imperatives are both the outcome and the cause of his evolutionism and *vice versa.*

Hayek, then, is an evolutionist as long as he defends capitalism as a general frame, but he uses imperatives when discussing the actual social relations within that frame[1]. Social democracy and the welfare state cannot be dismissed on an evolutionist basis[2]. They have to be judged according to imperatives. But, why do they have to be dismissed in the first place? Because, as Hayek says, they are an obstacle to the survival of capitalism itself. Whether one would accept Hayek's "threat" that they lead to socialism, or merely observe the fact that it is quite difficult for a capitalist state to assure full employment and a surviving economy at the same time, is not that important here. What is important is to understand that Hayek's

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[1] That "market theorists" take capitalism as the only basis of a "free" society is a view held not only by "socialists" but by liberals and conservatives alike. See, for example, N. O' Sullivan 1989 p.18. Moreover, R. Nisbet explicitly states that the purpose of freedom is the "protection of individual and family property" (R. Nisbet 1986 p.47).

[2] See also, N. Barry "The activities of the state cannot be determined by evolution, chance or custom since these factors seem to have produced the contemporary bloated social-democratic state" (N. Barry 1987 p.65).

starting point, his own "ultimate principle", is the maintenance of capitalism - a conclusion that is made clear through the identification of the public good with the maintenance of an overall order, to say the least[1]. Although it is evident that this is a broad interpretation of Hayek's theory, it is also one that has the advantage of providing an explanation of much of what is considered to be Hayekian unsolvable contradictions. The use of the "Great Society" as a present and at the same time futuristic ideal type of society, the inconsistency between ontology and methodology and the inner inconsistency of methodology itself may well be explained in that scheme.

4. Freedom under the Rule of Law: Evolutionism and Imperatives

For Hayek, the concepts of freedom and the rule of law cannot be separated. Law is "the science of liberty". There cannot be liberty without law and law is the only safeguard for liberty. Hayek then, follows Burke in conceiving of liberty as a characteristic of an order governed by certain rules. Therefore, in what follows we shall try to examine the characteristics of the law of liberty. By doing so we will be giving an account of Hayek's concept of liberty in its theoretical form. In the last chapter we shall try to examine the practical political consequences of that theory, as well as the compatibility of the theoretical premises with their practical outcomes.

There are four characteristics of the law of freedom: a) the recognition of an individual private sphere of action, b) the general and abstract character of the rule, c) its resulting impartiality and d) its purposeless character. If these four conditions are satisfied, then the absence of (illegitimate) coercion is guaranteed and so is individual liberty[2]. Hayek seems to promote a "restrictive" concept of liberty[3].

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[1] Hayek's intention of presenting the basic characteristics of capitalism as eternal is also shown in N. Barry's argument. Barry argues, in accordance with Hayek, that "The most famous historicists were really trying to make the political point that the universal theorems of economics that emerged in the last century were relative to a so-called capitalist period of historical development and would cease to be valid beyond that point." (N. Barry 1979 p.35). It is quite doubtful, however, if such teleological conclusions can be reached by a "scientific evolutionist" approach.

[2] For a similar account of liberty see F. Machlup's contribution in E. Streissler 1969.

Liberty for him is only the absence of deliberate personal coercion. From this definition it follows that whenever we want to create the conditions of freedom, all we have to do is to examine the ways in which all deliberate coercion can be dismissed (or at least minimized). Many scholars are satisfied by trying to accommodate Hayek's account of liberty into the negative-positive scheme. It seems, however, that the analytic effectiveness of that distinction - if it has any[1] - is quite debatable in Hayek's case. For example, the unconditional classification of the Hayekian freedom as "negative" liberty[2] meets serious objections even in the liberal/libertarian camp. Even in the case where "freedom from" is identified with negative liberty quite apart from any Berlinian connotation[3] many objections are still left unanswered. Thus, Hamowy points out that Hayek lapses into a positive concept of liberty because of the inadequacy of his initial conception. "I am unfree (coerced) to the extent that I am deliberately denied those things which I find preserve what I most value; this argument is constructed in such a way that my freedom can require that others be forced to act in a particular way (...)." (R. Hamowy 1978 p.231).

Quite apart from these objections, probably the most essential point on that matter is made by Gray (1981 pp.75-76). Gray notices that by taking the rule of law as the only condition on which liberty rests, Hayek is actually promoting a positive Rousseauesque view of liberty according to which "(...) "true law" cannot limit freedom". Since it is only subjection to the arbitrary will that constitutes unfreedom and since such a situation of unfreedom can only be avoided by subjection to the rule of law, it follows that for Hayek freedom *is*, actually, to abide by the rule of law[4]. Notice, however, that for all its validity Gray's remark is incomplete. For, notwithstanding its formal articulation, freedom in Hayek's theory has nothing to do

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[3](...continued)

[3] "Restrictive" is used in the literal sense. It has nothing to do with "restrictivism" as it is used by Gray (following Weinstein's concept) in J. Gray 1980b pp.507-526.

[1] See, for example, C. Taylor in A. Ryan 1979.

[2] Promoted, among others, by Lord Robbins 1961 p.67 and R. Aron 1961 p.200; on that matter see also K. Dixon's attempt to combine negative freedom with a welfare-oriented political theory (K. Dixon 1986).

[3] See, for example, Jacob Viner 1961 p.231.

[4] For a full account of Gray's views on positive and negative freedom, see J. Gray 1980b.

with any "Rousseauesque" (or for that matter Kantian) concept of liberty[1]. In fact, as Cristi[2] observes correctly, it is with Rousseau's idea of freedom under the popular sovereignty that Hayek's thought is incompatible[3]. If individual freedom is identified with the reign of the rule of law, then Hayek's theory acquires a legal character. Nevertheless, Hayek himself tends to reject this character. Thus, he argues that the rule of law is not merely a legal doctrine: "The rule of law is therefore not a rule of the law, but a rule concerning what the law ought to be, a meta-legal doctrine or a political ideal" (F.A. Hayek 1960 p.206). Here again Hayek argues along the lines of a moral-imperative tradition. Nor is this idealization of the "rule of law", and consequently of political philosophy, accidental. With it, the tension between "scientism" and political philosophy rebounds into a tension between a fragmented, formalistically conceived reality and an attempt to resynthesize that reality into a comprehensive ideal whole which, nevertheless, should not be based on rationalism. It is, thus, a tension (contradiction) between a rationalist, formalistically conceived, systematic "reality" and an (almost explicitly) superimposed ideal the task of which is to express that "reality" in terms of political philosophy. It has already been argued that in Hayek's case this attempt arrives at its horizon in the unhistorical (and metaphysically charged) conception of tradition. The content of the "rule of law", conceived formalistically, is not of a legal but of a political and historical character (albeit with a supra-historical appearance). Hence, its overall characterization as metalegal or political ideal (F.A. Hayek 1960). Thus, what Hayek is in fact doing is only an application of his epistemological agnosticism to political theory. By considering the "rule of law" as meta-legal, Hayek is founding it in history or tradition; but he is doing so only as a part of his systematic attempt to question reason as the basis of law. By depriving it of rational content he renders it only a formal calculus according to which one is able to determine the legal consequences of one's actions as precisely as possible. That is why the essence of the "rule of law" is to be

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[1] Rather Hayek tends to conceive of free people as "legally secured atoms" (R. Vernon 1976 p.267).

[2] See relevant section in part I.

[3] The belief that freedom is inseparable from the rule of law is common among neoliberals. G. Dietze, for example, argues that "The rule of law is, in a way, the other side of freedom" (G. Dietze in F. Machlup 1977 p.117).

regarded as incomprehensible both by common people and by the jurist himself. But this mystical character is attributed to it *by definition* as a transcending of the initial formalistic epistemological approach.

The question that emerges from Hayek's formalistic reasoning is why should the "rule of law" be accepted as a political ideal. There are at least two answers that suggest themselves directly in Hayek's work - not to mention its countless interpretations. The first is that law ought to be a political ideal because it constitutes the ultimate social value *per se*. We have already mentioned this concept and so we will not expand up on it. The second answer is twofold. Law ought to be as Hayek describes it because it is the outcome of a process of natural selection and elimination. Thus, the rule of law that managed to survive and establish itself in our society is logically the most effective. Its effectiveness however should always be understood in terms of its ability to maintain a certain social order. In that sense the rule of law cannot be a political ideal; it can only be a means towards the political ideal which is the preservation of social order. The second part of this answer concerns the idea that the rule of law ought to be as Hayek suggests because it promotes the unknown interests of each individual. This version obviously remains incomplete as long as it is defined from the "outside" - that is, as long as the agents (individuals) cannot express their feelings on whether the rule of law does actually promote their interests or not. It also remains ambiguous since no identifiable criterion exists according to which one can measure a society against its efficiency to promote those interests. That is why Hayek suggests that it will not prevail unless it becomes "a common ideal shared and unquestioningly accepted by the majority" (F.A. Hayek 1960 p.206). In that case, nevertheless, the ideal seems to be the pursuit of individually unknown interests and not the rule of law. The latter appears again as the most effective means of achieving the ideal but as not the ideal itself. It therefore remains to be shown why it is necessary for the majority to accept the rule of law as an ideal instead of what it really is - i.e. a means. Although the two above mentioned answers can be regarded in a sense as "utilitarian" they certainly differ to a great extent. The first is based on "a natural evolutionary" concept which leads to the admission that everything that exists is good, while the second presupposes a distinct subjectivist ultimate value (pursuit of individual interests) and arbitrarily identifies this with a method of

achieving it - the rule of law.

This line of argument also introduces some further implications. Hayek clearly states that the effectiveness of the doctrine of the rule of law depends on its unquestioning acceptance by the majority. This, of course, contradicts the natural selection doctrine since it introduces as determinative a subjective and "non natural" criterion[1]. Furthermore, it reduces the whole argument to a commonplace and tautological statement. It is quite probable that a society will be "well functioning" and continuing if the majority of its members unquestionably accept certain principles irrespective of the content of those principles. Finally, we must notice Hayek's troublesome appeal to the majority. It indicates, to say the least, a certain inconsistency in Hayek's line of argument, since, as we shall see later, for Hayek the main threat comes from what he calls majoritarian democracy. If endorsement by the majority is a necessary condition for the rule of law in the first place, then why is it not necessary whenever a practical political decision is to be made? Hayek should have either accepted the majority opinion as a necessary criterion or rejected it altogether throughout the political process. His argument instead seems to be that majority opinion is respectable, and even desirable, when it goes along the lines of his theory but that it becomes an obstacle and therefore has to be left out from any moral or political consideration when it tends to move towards any other direction.

The conclusion here is that Hayek's maxim of the rule of law lacks justification. Hayek maintains that it is desirable but he does not argue, at least not consistently, why or to what extent[2]. Now, this lack of consistency provides an additional proof of the opinion we expressed above: namely that Hayek's ultimate goal is the justification of capitalism in general and of its particular needs in the concrete phase of its development[3]. It does so at least in an indirect way: since Hayek does not provide us with any definite answers as to what the ultimate values of his system

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[1] For the constant tension between evolutionism and subjectivism in Hayek's theory, see also G. Walker 1986 pp.54-55.

[2] Thus, permitting to N. Barry to comment that his theory collapses into an "uncritical traditionalism" (N. Barry 1982 p.45).

[3] Similar conclusions can be derived indirectly from G. Walker 1986 p.48 and R. Vernon 1976 *passim*.

are and why, he leaves some space for other interpretations which should be primarily judged not according to their fidelity to the original text but according to their effectiveness in providing answers where he has failed.

5. Characteristics of the Law of Freedom: The Distinction Between Public and Private

A closer examination of the characteristics of the law of freedom is perhaps necessary at this point. The first point to note is that law must recognize an individual private sphere in which no interference by positive law or governmental actions can ever be legitimate. It is not necessary to mention that this preposition constitutes one of the most fundamental maxims of bourgeois society. It has appeared in different forms, from the very beginning of liberalism, but acquired a more definite shape in the 19th century and especially in J.S.Mill's works[1]. For Hayek it seems to be the *sine qua non* of a law which can become the law of "liberty". This private sphere, in which no external interference is legitimate, is to be delimited according to the results that individual actions will have. That is, if certain actions and their results concern only the individual actor then the rule of law cannot interfere in any sense in their realization. If, on the contrary, they might have consequences which will influence other individuals as well, then the rule of law should clearly define the limits within which these actions ought to take place. *En passant*, it might be noticed that hand in hand with this private sphere of "rights" goes the defence of private property. Thus, Hayek says that "(...) to divide the material objects of our environment into what is mine and what is another's is the principle aim of the rules which delimit spheres(...)" and consequently "The recognition of private or several property is thus an essential condition for the prevention of coercion(...)" (F.A. Hayek 1960 p.140)[2]. But the defence of property in terms of a protected domain is not altogether trouble-free. It

[1] Notably with the attempt to distinguish between the "civil" and the"political".

[2] Notice that this is by no means a liberal or libertarian view only. As prominent a conservative as Nisbet quotes approvingly the proposition that the right to property is more important than the right to life itself (R. Nisbet 1986 p.55) thus demonstrating that the sanctification of property transcends any formalistic distinction between liberals and conservatives.

may be that Hayek takes property as the basis of civilization - even arguing that this is a "scientific" fact - and as the necessary precondition of a rule-governed society, but it becomes increasingly difficult to sustain this kind of classical liberal argument in contemporary societies. In one of his eclectic accounts of classical liberalism, Hayek quotes half of Locke's position (F.A. Hayek 1960 p.141) and thus argues on a rights based tradition that a person who possesses property is free. But by property Hayek means in this connection the possession and exchange of one's own labor only. But what happened to the other half of the classical Lockean argument that a free person should also be the possessor of the fruits of his labor[1]? It is simply left out of the neoliberal account of freedom[2]. Thus property is still the basis of freedom but its content has been readjusted to contemporary circumstances. Property as a social institution in its abstraction guarantees freedom but a person can still be free if he has no possessions at all. Thus, we end up in the paradoxical situation where property is considered to be the basis of individual freedom while, at the same time, people are supposed to be free even if they do not possess property themselves[3].

The delimitation of the private sphere appears in Hayek's work in two clearly distinct ways. The first way is in accordance with the classical definition of J.S. Mill, that is, it distinguishes between "actions towards others" and actions which are not of this kind, according to their effects. In that sense, Hayek points out, there are certain actions "which are clearly not of this kind" (i.e. "actions towards others") "such as what a person does alone within his four walls, or even the voluntary collaboration of several persons, in a manner which clearly cannot affect or harm others" (F.A. Hayek 1973 p.100). These actions should never come under the jurisdiction of a rule because this will signify the infringement of liberty. Hayek's examples as to what constitutes an action which does not bear effect upon others are deliberately abstract[4]. Being

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[1] For the transition from universal natural rights based liberal tradition to the justification of unlimited property in classical liberalism, see C.B. Macpherson 1962.

[2] For a contemporary account of this point see J. Hoffman 1988.

[3] In fact sometimes they are considered to be more free than those who do possess property. See also J. Viner 1961 p.231.

[4] For a similar view, see also C. Kukathas 1989 p.160

aware of Mill's inability to define the private sphere in an adequate way, Hayek is trying to circumvent the problem of definition while at the same time presupposing the existence of privacy. The problem that goes along with the definition of the private sphere of individual action, however, is implicit in the very concept and consequently it appears whenever a theory appeals to it. It can be described briefly as the complete distinction and the consequent confrontation between the individual and society. In the history of liberalism many philosophers, including J.S. Mill, have taken this distinction for granted. Hayek seems to do the same thing here. But what is "surprising" in Hayek's case is not that he has chosen this fiercely criticized scheme concerning private and public spheres but that he did so after developing a whole "monist" philosophy according to which the distinction between natural and mental (i.e. "artificial") is rejected. If Hayek actually held the monist position, he would have found it difficult to presuppose a distinct sphere of individual action, since this sphere can "exist" if we ascribe to the individual minds a distinct substance. From saying that the mental attributes of the individual are part of the sum of the attributes that all individuals have, it does not follow that a sphere within which the individual subsists in isolation, might exist. All individual actions will necessarily be determined by the fact that the individual's mentality is a part of the whole; therefore, a "private" sphere as distinct from and opposed to the whole is not even conceivable. By this, I am merely implying that a monist concept of individuality as a part of the whole does not permit the introduction of sovereign private spheres where the individual is supposed to act as a self-contained category.

This brings us to the second way in which Hayek is trying to justify the existence of a "private sphere". "Its aim cannot be to protect people against all actions by others that may be harmful to them, but only to keep certain of the data of their actions from the control of others" (F.A. Hayek 1960 p.143). Now, this concept is clearly different from the first one. While in the first Hayek was referring to actions that clearly do not affect others, here he states that "there is hardly any action that may not conceivably affect others" (F.A. Hayek 1960 p.143). In that sense a private or protected sphere is not defined as an independent ground of action but, rather, as a sum of information about actions. The criterion therefore is not whether my actions will affect others but "whether the actions of other people that we wish to see

prevented would actually interfere with the reasonable expectations of the protected person" (F.A. Hayek 1960 p.143). The difference between the two versions of private (or protected) sphere are of great importance. While in the first version Hayek adopts a position quite similar to that of Mill in the second the similarities are only superficial. In the second case the protected sphere is not supposed to guarantee individual freedom in the sense of self-realization but merely the privacy of certain classes of information (data). Hence, its aim is not freedom, but private knowledge of information. Unless a definite link between such knowledge and freedom is established, the "private" sphere remains irrelevant to the problem of freedom.

But does the protected sphere become more justifiable even if it refers only to the assurance that certain data will remain known only to the protected individual? Hayek is identifying the practical outcomes of this knowledge with the reasonable expectations that an individual might formulate in a situation. But what does a "reasonable expectation" mean? This question is bound to remain unanswered in Hayek's work. If, however, we press upon him the need for an answer to this question, we might imagine a most totalitarian regime where the most elementary rights are abolished; under this regime people will continue to act; and it is probable that they will form expectations concerning the results of their actions.

Now, what would be a reasonable expectation in such a regime? Clearly an expectation that is likely to come true. Then we can say that in any regime (even the most oppressive) a protected sphere still exists since the actions of the government will not interfere with the reasonable expectations of the actor. The criterion that Hayek uses in delimiting the protected sphere, then, becomes relativistic and subjective. Reasonable expectations, in order to be reasonable, should take into account primarily the frame in which they appear. Hayek is obviously presupposing that this form is a bourgeois democracy but this is, in terms of his own evolutionary argument, by no means a necessary condition. So Hayek has two alternatives: either he has to inscribe to "reasonable" a transcendental, eternal meaning and thus render it a mere fiction, or he has to leap into complete relativism. Apparently, he does the second: "The enforcement of religious conformity, for instance, was a legitimate object of government when people believed in the collective responsibility of the community towards some deity (...)" (F.A. Hayek 1960 p.143). But the question here is not

whether it was legitimate or not. The question is whether it provided for or protected the sphere of individuality. And the answer should be the affirmative. Because if by protected sphere we understand the control of certain data according to which we form reasonable expectations, in the above example, the only reasonable expectation that could be formed by anyone is in fact that religious conformity should be enforced. It is, then, the (Berlinian) dead end of the "contented slave" that Hayek's relativistic subjectivism is unable to surpass.

Hayek's concept of the protected sphere of individuality, although presented as a condition of the law of liberty in general, can therefore only acquire some meaning if examined within the concrete conditions of a capitalist society[1]. And again, within these conditions, its relation to liberty remains far from clear. Finally, we must note a contradiction implicit in the two spheres theory in all its versions. A violation of the private sphere is at the same time inescapably a public offence and therefore not an individual matter. The use of the term "protected" instead of "private" makes this contradiction even more clear. It is a concern of the state to delimit private spheres as well as to punish those who trespass them[2]. The state thus becomes "an agency concerned to promote or maximize freedom" (C. Kukathas 1989 p.164), something that connotes an apparent inconsistency with Hayek's supposedly Kantian standpoint.

6. Abstractness and Generality

The second characteristic of the rule of law is its abstractness and generality. As Hayek states, "Law in its ideal form might be described as a "one-and-for-all" command that is directed to unknown people and that is abstracted from all particular circumstances of time and place and refers only to such conditions as may occur anywhere and at any time" (F.A. Hayek 1960 pp.149-150). This abstractness and generality of the rule of law is a necessary characteristic which depends on the nature

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[1] See also R.A. Arnold 1980 pp.341-352.

[2] For a statement similar to Hayek's, see J. Gray 1986b p.81.

of our society. Only in small societies where every member knows every other is it possible to conceive of rules which ascribe particular things to particular persons because there, each member possesses a concrete and considerable amount of knowledge of the personality and expectations of all the others. "But the greater the society, the greater the likelihood that the knowledge which its members will have in common will be abstract features of things or actions; and in the Great or Open Society the common element in the thinking of all will be almost entirely abstract" (F.A. Hayek 1976 p.12)[1]. Hence, the abstract character of the rules of law is based primarily on the quantitative component of the society and the consequent complexity of the relations between its members; it is also considered as a necessary feature of the rule of law in the "Open Society". Such rules end up by constituting a general frame within which the individual moves independently; they prescribe the limits of his/her movements but not the movement itself.

So, the abstract and general character of the rule of law is prescribed in a twofold way. Firstly, its essence is by necessity abstract since it describes a highly complex order. Secondly, its form should also be general so that no particular individual or group of individuals will be discriminated against and thus coerced before he or it chooses to act. This generality is considered by Hayek to be "the most important aspect" of the abstractness of the rule of law.

The spectrum of formalism has long haunted liberal political theory. In Hayek's case its presence is particularly enervating for liberals and libertarians alike[2]. In fact, Hayek senses that the accusation of formalism is bound to confront his theory constantly. Thus his account of the conditions that safeguard liberty is mainly apologistic in its essence. It might be helpful to see how the same problem is tackled by some more charitable theorists. In a description of what he calls "fuzzy liberalism", F. Machlup gives a list of some classical liberal demands as well as of their application in modern societies. His argument seems quite simply to be that some abstract formalities - like the much celebrated equality before the law - have unfortunately been "extended" into practical measures of actual social life. As long

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[1] For a similar position, see M. Polanyi 1951

[2] For example, N. Barry 1987 p.63.

as they were merely ambiguous demands they were liberal; but, when they were turned into practical applications, they became illiberal. This line of argument shows adequately the relation of the "new" liberalism to its ancestors. In the same sense, F. Machlup argues that the two fundamental errors responsible for the distortion of freedom in our society are, firstly, that we tend to regard "freedom from" as an expression of liberty equal to "freedom to", and, secondly, that we tend to confuse "I may" and "I can" (F. Machlup in E. Streissler 1969 pp.123-124). According to this concept "freedom from" is not a freedom at all because it requires positive action in order for it to emerge. It is only "freedom to" that can be said to express the "liberal" ideal of freedom; because "freedom of speech and of religion give people the right to speak, express themselves, and worship in any way they like;" (F. Machlup in E. Streissler 1969 p.123). But what it does not do is give people the ability to put their thoughts into practice, that is, to act. Similarly the distinction between "I may" and "I can" points towards a highly formalistic concept of freedom. Freedom exists whenever I may do something irrespective on whether I can do it or not. The introduction of such freedom is almost inevitably accompanied by some "illuminating" examples, such as, "I am free to buy the most expensive diamond in the world even if do not have the money" whereas "I am not free to buy drugs even if I have the money" (F. Machlup in E. Streissler p.124)[1]. Obviously, the list of examples can be extended infinitely if one adds the freedom of the individual to fly, or his/her freedom to visit the moon regularly... .

The problems that emerge from the formalist definition of the characteristics of the law of liberty seem to be well known to Hayek. He is aware that although the rule might use an impersonal and "general" language, discrimination can still take place. He is also aware that during the articulation of the law into specific rules some sort of normative judgement will emerge. Thus, the "perfectly neutral framework" that the rule of law is supposed to provide will not be all that neutral after all. To this Hayek proposes the test of universalizability.

Here, again, Hayek seems to have modified his approach during the course of

[1] Notice that this time the restriction is only legal; it does not refer to the ability to act in a certain way.

two decades. Although a law might be general it still might classify different groups of people into different positions, he says. In fact "some such classification, even within the group of fully responsible citizens, is clearly inevitable" (F.A. Hayek 1960 p.209). The criterion according to which the law should be judged is that "those inside any group singled out acknowledge the legitimacy of the distinction as well as those outside it" (F.A. Hayek 1960 pp.209-210). Now Hayek, for some obscure reasons, calls that criterion the criterion of equality before the law, although it is evident that it refers exactly to the opposite. It is precisely because equality before the law is an ideal that will always remain beyond our reach, as Hayek himself acknowledges, that we must adopt the "legitimacy" criterion. The same concept appears in a different form as well. Thus, a distinction is drawn between the lawgivers and the rest of the people and it is further argued that "The chief safeguard is that the rules must apply to those who lay them down and those who apply them - and that nobody has the power to grant exceptions" (F.A. Hayek 1960 p.155).

The two criteria however might produce some problems of consistency. If law is allowed to and in fact does distinguish between different groups of individuals, then it is hard to see why it should not distinguish between the two particular groups, the lawgivers and the rest of the subjects. It could be argued that the distinction between lawgivers and the rest of the people is one that law should not make, although it may make distinctions between other groups because such distinction infringes liberty. But that is something that Hayek is not saying and in fact could not say. If Hayek were to argue that there are certain distinctions that infringe liberty as such whereas others do not, he would have implied an absolute criterion according to which all distinctions would be classified, that is, an *a priori* normative criterion based on some sort of theory of rights, as most liberals and libertarians suggest. That criterion should be so comprehensive that it would contain all possible distinctions occurring among all persons and groups in society. But this is precisely what Hayek maintains to be impossible - i.e. to get to know and consequently to take into account beforehand any case that might occur in a complicated order. That is why he is obliged to suggest a much more abstract criterion, that of legitimacy. But if this argument is valid then there is no possible way of rejecting any sort of discrimination by the law. Any discrimination is permitted as long as "those inside the group as well as those outside

it" believe it to be legitimate, a position that leads directly to relativism. In that sense any objection concerning a discrimination between groups - for example that between the lawgivers and the rest of the people - which is made on the basis of absolute good or bad categories becomes indefensible.

Finally, the legitimacy criterion produces an infinite number of problems when one tries to use it as a practical guideline. This is mainly due to the ambiguity of the concept of legitimacy. It is unclear what should count as legitimate in a society. For example, it can easily be argued that the reason why people live under particular social conditions may be due to indifference, ignorance, acceptance, will, choice, tolerance and so on. It certainly sounds gross to put all possible reasons under the same label and to use it in order to draw such politically dangerous conclusions. Matters become even worse when one tries to apply the legitimacy criterion in a particular case - say a distinction between two groups of persons. Nevertheless, the two concepts (the legitimacy criterion and the non-discrimination principle) are two forms of the same line of thought. They are both based on a quantitative presupposition. In both cases the universalizability test means that a certain group of people are either treated equally by the law, or accept an unequal treatment for certain reasons.

In his later writings, though, Hayek appears to argue on a different basis. Thus, the test of universalizability is now transformed into a test of "consistency or compatibility with the rest of the accepted system of rules or values". Hayek now seems to have abandoned any quantitative measure; the "(...) question of what would be the consequences if everybody did a certain thing" is a misleading question because most actions "would become obnoxious if everybody performed them" (F.A. Hayek 1976 p.28). Therefore, universalizability is not a "physical" or "practical" test; it refers merely to our moral beliefs. It is thus equated with the question of whether we want a rule of law to be generally applied or not. Hayek goes so far as to state that the compatibility of a rule with the majority of the rules prevailing in a society is the only criterion according to which we can judge that rule. In that way he renders social sciences unnecessary. By doing so, he lapses into a paradoxical position, for, at the same time, he concedes that social theory is necessary for explaining (i.e. evaluating) the rules as well as altering them (C. Kukathas 1989 p.82).

Although Hayek never denied that the test of universalizability was at the same time a test of compatibility, in his later works he focuses exclusively on the latter, leaving aside all the other parameters he was suggesting before. The most important among them is the practical aspect of the test. It seems to me that in his earlier writings the test referred to moral as well as to practical situations. In that sense Hayek implied the legitimacy criterion - which could be broadly identified with that of the moral compatibility of a rule - but, at the same time, he also implied the practical criterion of non-discrimination between the lawgivers and the subjects of the rule. Here, on the contrary, any relation to the practical is rejected by definition. There remains only the moral sphere within which the test is supposed to take place. And, again, this sphere is defined in a subjective idealist sense - as an inner process different within each individual. The relations that take place in the real world - that is, the social relations and their legal expression through actual laws - is thus presented as merely an abstract relation between individual moral values. The test of universalizability becomes more consistent (no contradiction between legitimacy and practical non-discrimination any more) but it does so by losing its grasp upon reality. It becomes a totally abstract, literally non definable procedure that leads to relativism and agnosticism[1].

7. The Universalizability Test: Formalism and Utilitarianism

At this point, it may be helpful to consider Gray's analysis of the Hayekian test of universalizability, both because it articulates quite clearly the whole idea - something that Hayek himself has failed to do - and because it seems to have Hayek's personal approval. Gray is trying to defend Hayek's approach that the universalizability test is the only criterion that enables us to say whether a certain rule is a rule of law or not. Accordingly, he suggests three consecutive requirements of

[1] For a different account of the changes that Hayek's theory underwent, see N. Bosanquet 1983. Bosanquet argues that from *Law, Legislation and Liberty* onwards Hayek's main concern is the distinction between "nomos" and "taxis" and their definition respectively. He also believes that the defence of "nomos" as the supporting condition of the "Great Society" derives mainly from Hayek's "scientific" evolutionary approach rather than his idealist imperatives.

the test: firstly the demand of consistency as between similar cases, a demand that leads to "a merely formal demand of non-discrimination"; secondly, the demand "that one put oneself in another man's place" or the impartiality demand; and, thirdly, the requirement of moral neutrality. In Gray's view if the test of universalizability is understood in this sense then all criticisms based on the insufficiency of the formal general character of the rule will collapse.

In that way Gray identifies the consistency criterion with that of formal non-discrimination. But this point, however, is quite debatable. In order to establish that identification Gray presupposes that the consistency criterion refers to similar cases. But this presupposition is incomplete to say the least. It has been argued earlier that the use of the legitimacy criterion in order to justify a certain rule points in a different direction. A discrimination is justified if both those who are affected directly and those who are not believe it to be legitimate. But if Gray could find some ground for a practical application of the universalizability test in Hayek's earlier works[1] he would certainly find it more difficult to argue on the same lines in regard to Hayek's later works. The explicit way in which Hayek rejects any practical application of the test in *Law, Legislation and Liberty*, vol.2 (1976), while at the same time arguing that the only way we can understand it is by asking whether we will a rule to be generally applied - that is, when we put it under a test of moral compatibility not with actual cases but with individual moral values - has already been mentioned. In that sense, the identification of the consistency principle with that of non-discrimination is misleading. Nevertheless, the point here is that Gray seems to accept that Hayek's test is indeed incomplete if it is limited to this first requirement. In order for the test to become sufficient, Gray argues, we need to consider two further requirements, that of impartiality and that of moral neutrality. Gray believes that these two requirements are necessary preconditions if Hayek's concept is to have any credibility at all.

In this way Hayek's test of universalizability is supposed to be made efficient for judging a rule of law and the actions deriving from it. The problem here is that in order to avoid the criticism of being abstract, and thus arbitrary, Hayek is using two

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[1] As in the case of the requirement of non-discrimination between lawgivers and subjects in *The Constitution of Liberty*.

complementary categories, which are even more abstract and arbitrary. Impartiality and moral neutrality, if they have any meaning at all, are far from being self-evident concepts. Hayek not only fails to define them or illustrate their meaning, but presupposes them to be all-human characteristics too. Even if in some way he could prove that these categories have some meaning it would still be necessary to show that they can become the moral basis of every individual in a certain society.

An argument could be raised against the objection introduced here. It could be asked: must every individual actually be impartial in order for the criterion to stand? This question can be developed in two consecutive steps: a) why do impartiality and moral neutrality have to be actual characteristics of an individual, and b) why does every individual have to adopt them? It is true that a moral principle, especially when it comes in the form of an abstract moral imperative, does not have to exist in actual life. Does this mean that its validity is irrelevant to its possibilities of becoming true? How are we to distinguish between the statements "everybody should fly" and "everybody should be impartial"? It seems that there are two alternatives. To establish the complete arbitrariness of any moral imperative as such in a strict positivist sense, which would lead us to consider any moral judgment not as true or false, as correct or incorrect but simply as irrelevant. In that sense the two above mentioned imperatives are equal. Or, to try to establish a further criterion according to which the imperative is to be evaluated. In Hayek's case it is obvious that the imperative is evaluated according to its conduciveness to (and compatibility with) the Ideal, that is, the "Great Society". But this admission simply moves the danger of relativism one step further on; for, it is now the Ideal itself that might be considered as irrelevant. The problem in that case is, then, that imperatives are used in reference to an Ideal (social order under the rule of law) which, in its turn, is already supposed to be connected with social reality itself. The links between the Ideal and reality have been furnished by the "scientific" part of Hayek's theory, that is, by the evolutionary account of society. It seems, therefore, that, notwithstanding any verbal objections, Hayek does not really have a choice; his imperatives are somehow related to social actuality, as is his "Great Society". Consequently, it is only logical to assume that he takes them as (even potentially) actual characteristics of the social order.

The second question posed is whether the requirement that "all men should be impartial" is a necessary condition for Hayek's criterion to stand. It should be admitted that Hayek is not referring to any numerical parameter when he introduces it. It seems, therefore, enough to say that if one individual is able to satisfy the conditions of the imperative - thus proving that it is possible to fulfill it - the criterion would be legitimate. Against this suggestion two objections seem plausible. Firstly, Hayek is using the impartiality and moral neutrality criterion in order to decide if a certain action is in conformity with a social and political ideal. Therefore, although the imperative is addressed to individuals, it certainly refers to society as a whole as well. For, individuals acting according to subjective imperatives against the main moral requirements of their society can hardly constitute a solid basis for the social order of the "Great Society". After all, the rule of law is an ideal aiming towards the "Great Society", not the Great Individual. Secondly, Hayek's own suggestions seem to point in that direction as well. In that sense, he argues that a "Great Society" will not function unless the great majority of its members accept those ideals. Consequently, it can be assumed that some sort of numerical importance is implied in the conditions of applicability of Hayek's imperatives.

So, even if we accept that Gray's interpretation of Hayek provides us with an answer to those critiques that demonstrate the inadequacy of the test, the problem still persists. Gray's answer should be that Hayek's test of universalizability could refute the accusations of being strictly abstract and thus arbitrary and empty of meaning, only if Hayek had proved that all agents actually are impartial and morally neutral. The fact that Gray presents those two requirements as necessary conditions, shows that Hayek's test is incomplete to say the least, and thus his "heavy reliance on it" is completely misplaced.

Two further points could be raised here. Although Hayek has initially based his theory on a "scientific" evolutionary approach he suddenly enters the world of moral imperatives in an arbitrary way. In fact, in this part of his social theory, Hayek relies completely on obscure moral imperatives; there is nothing left from the initial empiricist approach. After having argued that rules "grow" in the endless and purposeless process of the evolution of mankind, after having insisted that it is according to their persistence and ability to adapt to new circumstances that rules

should be judged[1], Hayek now, all of a sudden, introduces a further precondition: rules should only be judged if agents are impartial and morally neutral. So, when Hayek enters the field of social theory he abandons all the renovating attempts that he was making in ontology and methodology and adopts the kind of transcendental and abstract categories he criticized in his philosophical enquiries.

This brings us to the second point. A question that should be asked here is: can Hayek really expect impartiality and moral neutrality from his individuals? The question is being raised in this way to make clear that it does not address the problem of whether it is possible to have any impartial and morally neutral individuals, a problem which is quite distinct. For the sake of the argument it will be accepted that in principle it is possible to have an impartial and morally neutral individual, although this possibility is quite debatable. The question thus is: is it reasonable for Hayek to expect individuals as he describes them in the "Great Society" to be (or even to become eventually) impartial and morally neutral? The main characteristic of the Hayekian individual is that he constantly pursues his own ends. Now, although these ends are unknown to the rest of his fellow citizens and although they might be only partly known to him as well, he still remains basically the type of "egoistic" individual. It must also be remembered that the major part of Hayek's argument for the superiority of the "Great Society" is derived precisely from this presupposed egoistic attitude. It is true that Hayek rarely uses the term egoistic in order to describe the attitude of his individuals but the fact remains that he defends this end-pursuing individualistic attitude throughout his work. Indeed, one could say that one of this main objectives is to demonstrate that there is nothing wrong with that attitude and that it is only through the acceptance of it that we can reach freedom.

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[1] He does so in many parts of his work. A particularly illuminating passage appears when he discusses the relation between law and morals. Being aware of the accusation that his evolutionary concept will eventually lead to the admission that what exists is good and moral, he argues: not all the sets of moral beliefs are beneficial. "A group or nation may destroy itself by the moral beliefs to which it adheres". How, then, are we to judge a set of believes if only the eventual results can show whether the ideals which guide a group are beneficial or destructive? This sort of teleological "practical" reasoning which Hayek uses to evaluate morality is far from being compatible with moral imperatives. This is even more clear in the justification, he gives, of the superiority of the "Great Society": the "Great Society" is superior precisely because it will not permit to itself to decline as a whole - "only the groups guided by "impractical" ideals would decline, and others, less moral by current standards, would take their place"(F.A. Hayek 1960 p.67).

Impartiality or, as Gray explains, "the demand that one put oneself in another man's place" can now be examined in the light of the comments that have been suggested above. Hayek maintains that one can never put oneself in another man's place for two basic reasons. The first is that each individual pursues his own particular ends and that these ends are only known to him and to no one else. So, even if one is willing to put oneself in another man's place one can never do so, simply because one will not have the data needed to do so. To judge a rule and one's actions with the "eyes" of another who is pursuing his interests is *de facto* impossible for Hayek.

The second objection focuses on whether we can have any reasonable expectations that the Hayekian individual will be willing to put himself in another man's place. When Hayek discusses coercion he defines it as the incapability of one person to pursue his own ends because of the interference of another person; this interference aims at making that person pursue ends which are not in his interest. This is for Hayek the most objectionable situation that one can find in social life. But it seems that what is objectionable in social life is a requirement in moral life. What else does it mean to put one in another's place, apart from to make the pursuit of another's ends one's own task (if only in theory)? To be expected to regard a rule or an action in the light of the ends of another man becomes, thus, a necessary presupposition of the test of universalizability. It also becomes indirectly a presupposition of the existence of the "Great Society" in which it is treated as the worst disaster. What is supposed to be condemnable in practice becomes a theoretical requirement.

Furthermore, when Hayek discuses the functioning of the "Great Society" he assures us that the basic element is antagonism. "The correspondence of expectations is brought about by a disappointment of some expectations" (F.A. Hayek 1976 p.124), he says. In fact the whole point about the society based on the rule of law is precisely that it will function according to the principles of market antagonism. Now, how can we expect individuals to put themselves in other men's places in such a society? If the analogy is correct this would be equal to putting oneself in the place of the competitor while functioning in the market place. But the principle of market antagonism is to extract as much profit as possible from the goods and services one

sells, not to put oneself in the place of one's competitors. So, Hayek's individual is being expected to act in a different way in the market than in his "moral" life. Again, plain reason suggests that such moral imperatives are totally arbitrary in Hayek's system of ideas. Arguing for the "Great Society", Hayek, paradoxically enough, says: "In a sense it is even true that such a system gives to those who already have" (F.A. Hayek 1976 p.123). Combine this statement with the previous one about expectations that can be brought forward only if some other expectations (or expectations of the others....) fail and with the assurance: "In a spontaneous order undeserved disappointments cannot be avoided" (F.A. Hayek 1976 p.127). If one feels that he lives in a system that favors the strong, if he feels that in that system disappointment and in fact failure often occur to those who do not deserve it, and if at the same time he knows that the only way to avoid failure is by realizing his expectations, a process that is bound to lead to a failure of the expectations of others, how can he be reasonably expected to perform actions according to some totally abstract moral imperative that demands him to put himself to the other's place[1]? The Hayekian individual acquires a twofold existence: on the one hand he exists as a market force - his behavior and values are expected to correspond to the functioning of the market, like any other commodity. On the other, he exists as a bearer of abstract ideals - a holy figure who subsists in a world of "as if" values[2]. Thus, the practical implications of the distinction between "is" and "ought" become overwhelming. At the level of social relations the distinction reemerges as a distinction between the "intelligible" and the "practical" or "empirical" individual. Here, once more, the gap between the two types of individual appears to be unbridgeable by definition. Hence, Hayek's political theory acquires a systematically ambiguous content.

Hayek's failure to account for individual behavior in terms of abstract moral rules is shown more clearly in the case of monopoly profit. In a somehow perplexing manner he argues that monopoly profiteering is not immoral, as long as it does not

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[1] For the improbability of self-constrain in Hayek's scheme, see also M.M. Wilhelm 1972 as cited in part I. See also R. Plant's argument on the difficulties generated by such a requirement as well as the potential social instability that a theory with no substantive moral principles is likely to generate (R. Plant 1983 p.232).

[2] See M. Forsyth 1988 esp. pp.244-250.

become a force impeding individual freedom. It is, admittedly, quite difficult to think of some fixed limits beyond which monopoly control does become a coercive force. Hence, Hayek avoids undertaking such a task. Instead, he gives some examples in which monopoly power has become coercive. The celebrated example of the spring in the oasis is supposed to demonstrate such a situation. In that sense, Hayek's example is supposed to prove that it is not the monopoly as such but only a certain use of it that can become coercive. Hayek's example, however, seems to create more problems than it solves, even if its critique is limited to the same world of formalistic abstractions. For, the actions of the owner of the spring in the oasis will become coercive, according to Hayek, only when he will decide not to sell its water at a "reasonable price". Needless to say that the "reasonableness" of that price is bound to remain undefined throughout Hayek's works. Indeed, as Hamowy points out, there cannot be any criteria whatsoever which will demark the point at which a price loses its reasonable character. No criteria, that is, in the absence of a market. What is really surprising then, is that, after arguing that the market is the only price discovering mechanism possible, Hayek gives an example where a price is not only "discovered" but also denoted in terms of being "reasonable" *in the absence of a market.* For, what else is a monopolistic situation if not the negation of the "free" competitive market?

Hayek is one of the many liberals and libertarians who make use of such "illuminating" examples. In his attempt to distinguish between "true" freedom and freedom to do what one wishes, he gives as an example a situation where one is supposed to wish to have his portrait done by a famous painter. Hayek says that if one cannot afford to fulfil such a wish, one cannot be thought to be coerced by the painter's rejection of settling for a lower price[1]. What differentiates the "oasis" from the "painter" example, then, is the actual commodity that is to be sold. Politically speaking, both examples are persuasive only because they state the obvious. In terms of methodology, however, they both (being two samples of precisely the same reasoning) demonstrate the failure in practice of Hayekian social thought. For,

[1] Compare also with F. Machlup's "illuminating" example, cited *infra*, where one wants to buy the most expensive diamond in the world etc..

although it might be obvious that water is essential for life while a portrait is not, the real question is who is to decide what is and what is not essential for one's life. Hayek's necessarily subjectivist answer to this is that an individual is coerced when he/she is deprived from what he/she most values. But the resulting relativism of that view can hardly consolidate the (already) formalistic account of freedom.

This brings forward the moral problem of monopoly power. Can we suppose that somebody enjoying a *de facto* monopolistic situation will refrain from monopolistic exploitation? Even if we were to answer on a strictly voluntaristic basis[1], this would be quite unlikely. Besides, this is precisely Hayek's main accusation against a powerful central bureaucracy: once they have some "monopolistic" power it is highly unlikely that they will refrain from using it. Why, then, do we have to suppose that this is not the case with individual capitalists as well? This problem which, it seems, has troubled free market advocates is left almost completely unanswered in the Hayekian approach. The problem of "legitimate" - from a moral point of view - profiteering in a monopolistic situation demonstrates the inability of Hayekian[2] theory to establish any abstract moral principles other than the "laws" of the market. Hayek is obliged to lapse into some less than satisfactory explanation whenever he tries to condemn cut-throat selling[3].

Is the case different with moral neutrality? Moral neutrality is quite a similar concept to impartiality. Indeed, as Gray explains it, it means to "be impartial as between the preferences of others, regardless of our own tastes of ideals of life". Therefore, moral neutrality does not exist for all the above mentioned reasons plus at least one more: that our own ideals, if we take them to be imperatives, can easily require from us a certain behavior towards others. Now, moral neutrality precisely

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[1] That is, leaving aside the fact that the capitalist who enjoys a monopolistic situation would be forced into monopolistic exploitation by the objective competitive economic conditions as well as, by the fact that this is the only way to maintain his monopolistic position.

[2] Hayek is by no means alone into this difficulty. In fact most of the pro-capitalist theorists find it quite difficult to produce plausible answers on that matter.

[3] For an attempt to bridge the gap between profiteering and morality in capitalism, see also R. Harrod 1972 pp.208-221. Harrod's argument is that there somehow exists a moral sentiment in all human beings which prevents them to go over the (undefined) limits. Notice, however, that for Harrod it is at least clear that this sentiment lies clearly in the realm of metaphysics - that is, it must be implanted by some superhuman power (be it god or anything else).

determines what our behavior should be and thus becomes much more than a simple guideline, as Gray suggests; it becomes a moral ideal itself. In other words, the requirement of moral neutrality is by no means a supra-moral doctrine, a principle neutral in itself, but, on the contrary, it constitutes one of the main principles of a certain moral doctrine. This seems to be quite clear to Hayek as well. He doubts whether any rule that has passed the test of universalizability can serve the cause of freedom if it is enforced in a society where religious fanaticism prevails. That rule, though, could be formally legitimate. It wouldn't discriminate between rulers and ruled, it would be impartial in the sense that those who articulated it have put themselves in the other men's place before doing so. But it would certainly not be morally neutral in the sense implied above because this could possibly mean a moral offence. The members of such a society could feel, for example, that they all bear a collective responsibility (apart from individual ones) in the eyes of god for what is happening in their society. Hayek is obliged to accept this possibility. "But how comparatively innocuous, even if irksome, are most such restrictions imposed on literally everybody, as, for instance, the Scottish Sabbath, compared with those that are likely to be imposed only on some!" (F.A. Hayek 1960 p.155). It is quite clear that after this admission there is little left from the once strict moral imperative[1]. It is also clear that at times, such as that referred to in the above quotation, Hayek forgets his "heavy reliance" on the test of universalizability and simply states that although it is not adequate it is the best he can think of....

To sum up, the elements of generality, abstractness and impartiality as they appear in Hayek's account of the rule of law suffer from an incurable emptiness that deprives them of any practical meaning. What Hayek finds difficult to defend even in theory becomes certainly unattainable in practice. The criticisms of mere abstract formality that were launched against the Hayekian concept resulted in an attempt to defend the initial idea by a further process of abstraction. The complementary process of impartiality and moral neutrality are unable to provide an answer both because they are even more abstract than the initial idea of non-discrimination - and they remain so throughout Hayek's work - and because they are essentially inconsistent with

[1] L. Robbins also challenges the Hayekian example (L. Robbins 1961 p.69).

Hayek's evolutionary and utilitarian approach of the rules of law. Again here Hayek was obliged to depart from his "scientific" concepts and enter the world of moral imperatives mainly because of the unpleasant results the evolutionary approach was bound to lead. The use of imperatives appears when he refers to a certain social stage - namely after he has established the superiority of the capitalist society in "scientific" terms - and serves as an argument for the development of that stage towards a certain direction.

Finally, the purposeless character of the rule completes the picture of the law of freedom. The first point to be mentioned here is that by "purposeless character" Hayek does not mean exactly that the law of freedom has no purpose at all (although sometimes he seems to use it in that context as well). Rather what Hayek means is that the law of freedom does not serve any particular individual purposes. "We have already seen that in the usual sense of purpose, namely the anticipation of a particular, foreseeable event, the law indeed does not serve any purpose but countless different purposes of different individuals" (F.A. Hayek 1973 pp.112-113). This, however, does not mean that law has no purpose at all. Law has a purpose and that is "The preservation of an enduring system of abstract relationships..." (F.A. Hayek 1960 p.113). Or, in other words, the preservation of what Hayek calls spontaneous order.

The preservation of an order, however, is a characteristic attributed to law by definition: Hayek has argued that only effective laws and the subsequent groups following them are allowed to survive. Therefore, any law prevailing in a society, in the long run, is bound to be not simply effective but the most effective amongst all known alternatives. Thus, the preservation of an overall order cannot be taken as the purpose of law; rather it is a necessary condition for the existence of the law. In that sense Hayek's remark that, if by "purpose" we mean "the aiming at conditions which will assist the formation of an abstract order, the particular contents of which are unpredictable" (F.A. Hayek 1960 p.113), then law can and furthermore should have a purpose, sounds somehow misleading. The problem here is that Hayek introduces an arbitrary distinction between abstract order and order in general.

It is not the character of the particular order that gives law "purpose"; it is the presupposition that law preserves an order (any order) in the most effective way. Therefore, the aim of law cannot be an abstract order but order in general regardless

of its character. Hayek is smuggling a qualitative distinction between orders based on moral grounds into a utilitarian argument. Law has a legitimate purpose only if it assists a spontaneous order[1]. But how are the two concepts - that of effectiveness and that of the superiority of a certain law on moral grounds - to be connected? Either law has a reason for existence because it provides the best - i.e. the most effective - way of organizing a particular society or it acquires a reason for existence when and only when it serves a particular morally superior society. The tension becomes more clear when Hayek argues that the aim of altering or developing the law "should be to improve as much as possible the chances of anyone selected at random" (F.A. Hayek 1976 pp.129-130). Here the moral imperative has replaced the effectiveness principle completely. We should alter the law[2] not according to its effectiveness but according to a moral criterion. Good law is not effective but morally acceptable law. Hayek should have at least made an attempt to explain this step. Had he done so he would have found himself confronting a very difficult task. Firstly, a reason should have been given as to why a morally superior society is more effective than a morally inferior one. Then an attempt should have been made to prove that it is because of its moral superiority that a certain society is more effective. It is doubtful if any argument to this effect can be made. The fact is that Hayek does not make any attempt to establish it.

Finally the purposeless character of the rule of law presents some additional difficulties when interpreted in the context of the spontaneous development of law. Hayek's argument that the validity of the rule of law as a political ideal lies precisely in its spontaneous development seems to ignore some obvious questions. Thus, "It is surely quite common for legal systems to develop spontaneously in undesired directions. For all his criticisms of the rationalism of the utilitarians they were faced with not merely a number of untidy elements in the system of law in the beginning of the nineteenth century but a welter of conflicting and confusing laws which

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[1] In that context, see also K. Widmer's point on R. Nozick. "Even "meta-utopia" has to be discriminating, purposive, substantive, under a particular set of historical conditions. In sum: there is not really any such monster as a "neutral framework", for utopias or anything else." (K. Widmer 1981 p.49).

[2] A concept quite problematic in itself in the context of Hayek's anti-rationalistic theory, as has already been argued.

required restructuring on more or less rational principles. The system could hardly be said to provide a model of the rules of just conduct available indiscriminately to all; and the legal profession, upon whose expertise and intellectual qualities Hayek relies to maintain the ongoing body of rules, had a vested interest, perhaps even a class interest, in preserving its complexity and needless technicality." (N. Barry 1979 p.88)[1]. Thus one can only agree with the point that "J. Gray's explication of the complexity and severity of the test of universalizability does not rescue Hayek from the difficulties he incurs in making this test the fundamental test of justice." (C. Kukathas 1989 p.173).

A comparison between Hayek's "limited utilitarianism" and 19th century utilitarianism can prove helpful. Thus, in terms of formal appearance Hayek's introduction of a qualitative distinction into a theory that is based on abstract quantitative comparisons approximates to J. S. Mill's version of utilitarianism. The result is that he, like Mill before him, ends up with an insoluble problem. Either he will have to abandon one of the two pillars of his argument or he will have to settle for a theory that is clearly inconsistent. It might be desperately abstract to compare different societies in different historical times according to some "effectiveness" criteria; but it becomes impossible to do so when qualitative distinctions are introduced before the very beginning of this comparison.

Hayek, as we have seen, believes that "The Good Society is one in which the chances of anyone selected at random are likely to be as great as possible" (F.A. Hayek 1976 p.132). This statement reminds us of the "greatest happiness for the greatest number" ideal at least in so far as its form is concerned. In both of them, it seems, the quantitative element is the decisive one. They both "calculate" the value of society in terms of "things" of the same species (happiness, chances). They both believe that a Good Society is the one that provides the greatest amount of those "things". Nevertheless, there are at least two important differences. In the classical utilitarian theory it is the amount of happiness that is to be calculated while in Hayekian utilitarianism it is the amount of chances that an individual has to achieve his ends. Now, although happiness is a highly abstract concept and can hardly be

[1] See also G. Dietze in F. Machlup 1977 pp.133-145.

used as a guideline in a social theory, Hayek's version is even more obscure. This is due to two reasons. The chances that one has to achieve one's own ends are obviously determined by the nature of these ends. It is one of Hayek's firmest convictions that the nature of these ends is known solely to the individual. Therefore, when one has to evaluate a society, one will have to do so without being in the position of knowing what the individual ends are. Consequently, one will never be able to tell what the chances of realizing those ends are. But the introduction of chances as the common element according to which society should be evaluated is misleading because of one more reason. The determination of the chances that one has to achieve one's ends, apart from being strictly an individual affair, is also deprived of any objective sense. Hence a society can still be evaluated as ideal although most (or even all) of its members will individually admit that they have not achieved their ends because that does not follow from the fact that they did not have the chances to do so[1]. And again the fact that an individual thinks that he has many chances of achieving his ends does not imply that he actually has them[2]. Hence, the greatest chances principle turns out to be an empty phrase. Not only is it impossible for any third person to express an evaluative judgement on these grounds, but the opinion of the members of the society themselves has been shown to be irrelevant to the evaluation[3].

The second decisive difference between classical utilitarianism and its Hayekian version lies on the elimination of the "greatest number" part of the maxim. Again the "greatest number" is a highly ambiguous expression that does not give us any idea of what it may include. But if the "greatest number" is an ambiguous expression its replacement by "anyone selected at random" is hopelessly vague. The fact that some particular person's chances of achieving his ends are as high as possible

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[1] It might, for example, mean that they lost them.

[2] It might simply mean that he is misled, or a fool.

[3] The fact that Hayek's criterion is all too abstract can also be shown in the way he presents it in some of his own works. Thus, he states that an economic policy is optimal if it is directed towards "increasing the chances of any member of society taken at random of having a high income" (F.A. Hayek 1967/69 p.173). The achievement of unknown individual ends has now been turned into provision of high income. This, admittedly, is a much more concrete criterion; but is the equation of "unknown individual ends" with "high income" self-evident and unproblematic?

(if there was a way of calculating them) does not prove that the society he is living in is the ideal society because no one particular person (however randomly selected) is a sufficient social indicator. Moreover, Hayek does not present any sufficient arguments from which to deduce that the ideal society is the one in which everybody's chances are as great as possible. On the contrary, there is sufficient evidence to the effect that Hayek actually excludes this possibility from his ideal society[1]. The conclusion may thus be that "anyone selected at random" is a phrase irrelevant to the evaluation of society. It is also a phrase that excludes by definition any reference to numbers, thus providing an adequate safeguard to Hayek's distrust of majority rule.

Concluding the above discussion, we can say that Hayek's concept of the purposeless character of the rule of law illustrates in an even better way the constant tensions between the arguments that he is using. The infiltration of qualitatively different standards into a utilitarian method leads him into severe trouble and makes his theory suffer from problems of inconsistency similar to those of J.S. Mill. Finally, the formal utilitarian terminology that he uses seems to conceal some determinative differences between his concepts and those of the classical utilitarians; differences which are probably due to the different objective circumstances in which the two theories were placed. In that respect Hayek's theory is shown to be systematically vague[2].

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[1] For example, he argues that a necessary precondition of the "Great Society" is the disappointment of the expectations of some of its members.

[2] The impossibility of identifying Hayek's theory with Mill's "indirect utilitarianism" - as J. Gray (1983) puts it - has also been pointed out by C. Kukathas 1989 p.64.

CONCLUSION PART II

The relating of Hayek's philosophy to the basic concepts of his social theory provides the opportunity of a more clear evaluation of his thought. The concept of "order" which is transferred almost directly from the field of theoretical psychology to that of social theory reveals the essentially justificationist aspect of the theory. At the same time, Hayek's insistence on identifying the outcomes of his naturalistic mechanical social evolutionism with the blueprint of the "Great Society" (capitalism), generates unsurpassable contradictions. In his effort to overcome these contradictions between teleological imperatives and "scientific" evolutionism, he reveals the essence of his theory: a "constructivist" rationalist approach the aim of which is to idealize capitalism by mystifying its contradictions. It does so in two ways; a) by presenting capitalism as the latest necessary stage in a "spontaneous" social evolution and b) by positively prescribing particular content to the outcomes of that evolutionism in the form of imperatives which aim at presenting capitalism as an eternal system. Thus, the ideological form of Hayek's theory results in obscuring the outcomes of his own evolutionism. It is the existence of a predominant political aim then, that penetrates Hayek's thought and gives it the unity and coherence it needs in order to become a real challenge in the field of social theory.

The examination of "freedom under the rule of law" seems to reinforce the above position. Hayek's epistemological agnosticism in that field results in a subjectivist and relativist account of human action. His purpose however is not to demonstrate the dissolving power of an abstract skepticism but to produce an actual social theory. Thus, he inconsistently argues for the possibility of accounting for individual actions because of the supposed "objective" desire of all individuals to preserve an overall order. His argument is conservative both formally and, more importantly, politically. His intention to preserve capitalism forces him into an inadequate tackling of the problem of liberty. The allegedly ultimate liberal value of individual liberty is presented in a radically different sense. It is reduced to a mere market value, that is, to the ability to act "unobstructed" in the economic sphere. Liberty in Hayek's theory becomes only a synonym of the smooth operation of the "free" market. With that, the preservation of capitalism is elevated to the highest plain

in the Hayekian structure of values. It is true that it does so under its time-honored liberal disguise as individual liberty. But this latter is now reformulated in such a way as to become a mere individualized synonym of the capitalist mode of production. The detailed examination of the requirements of the rule of law strengthens this view further. Hayek charts a path through stagnant formalism and arbitrary deductions by means of one guiding principle, a principle which is neither the consistent adaptation of his epistemological propositions to social theory nor a methodological coherence but, rather, the predominant consideration of defending and safeguarding capitalism.

PART III: HAYEK'S POLITICAL THEORY AND ITS IMPLICATIONS

The argument that has been advanced so far - namely, that Hayek's theory acquires its significance only if viewed as a political defence of the foundations of the existing socio-economic formation - will underpin the critical approach to his political theory that is attempted in this last part. After inquiring as to Hayek's philosophical premises and investigating how and to what extent these apply to the arguments he advances when he presents the central idea of his social philosophy - namely, freedom under the rule of law - it is perhaps high time to take into consideration the political implications of that theory.

This part deals primarily with the question of state power, in the framework of the Hayekian blueprint, the "Great Society". At the same time, it seeks to clarify the social relations that are likely to emerge if Hayek's proposals are taken as applicable in actual contemporary Western societies. Thus, the problems of law and order are examined further in view of their suggested political function, and so is the question of liberty, under the headings of democracy and Hayek's critique of the welfare state. Some further considerations concerning the question of state power immediately arise in the section which deals with the replacement of the term "state" with the term "government" as well as in that which criticizes Hayek's proposals on the functioning of a "good" government. Finally the presentation of the Hayekian "Model Constitution" is used mainly as a supplementary argument that reinforces the theses advanced thus far.

SECTION A: General Rules, Commands and Government

1. Rules and Commands

Hayek regards society as a kind of spontaneous order of individuals in coexistence, believing it has no separate existence as a category of its own: "(...) the multiplicity of grown and self-generating structures of men who have any freedom, that alone deserves the name of society" (F.A. Hayek 1979 p.140). On the other hand, "government" is an organization made to aid the functioning of this spontaneous order.

He argues that "spontaneous order and organization will always coexist" (F.A. Hayek 1973 p.48). Both spontaneous order and organization should rely on general rules (in contradiction to specific commands). The reason for this is that "by guiding actions of individuals by rules rather than specific commands it is possible to make use of knowledge which nobody possesses as a whole" (F.A. Hayek 1973 p.49).

There are two main types of rules or laws, according to Hayek. The first one, namely the universal laws of justice, govern the spontaneous order of society. The second, those formed by legislation, are rules for the performance of assigned tasks. "Such rules will be different for the different members of the organization according to the different roles which have been assigned to them (...)" (F.A. Hayek 1973 p.49).

"By contrast, the rules governing a spontaneous order must be independent of purpose and be the same, if not necessarily for all members, at least for whole classes of members (...)" (F.A. Hayek 1973 p.50). "They must be rules applicable to an unknown and indeterminable number of persons and instances". "Their application will be independent of any common purpose which the individual need not even know" (F.A. Hayek 1973 p.50).

The rule of law is considered to be independent of any individual purposes but at the same time determinant of the form of the overall order. In that sense, it does have a purpose and this is the maintenance of that order. The problem with such an appeal to general principles, in order to justify an abstract concept, is that the whole scheme is too vague. It will be argued that the appeal to the general is used as a shield for the introduction of certain principles which, far from being of general acceptance, tend to be identical to some very disputable characteristics of contemporary Western societies. Hayek uses an intentionally vague conception of the rule of law in order to smuggle in all major principles of the existing socio-economic order without at the same time tying himself to a commitment to preserve what he regards as concessions to socialism. We can, of course, imagine Hayek's laws in the form of appeals or declarations that may be accepted typically as mere words or propositions. But when we come to their real existence, namely their application to practice, we will see that since society is class divided those laws cannot in their essence "be the same for everybody". That is why this proposition is almost immediately altered by the introduction of the phrase "at least for whole classes".

This alteration, however, is decisive for the meaning. It is an indication that in a class divided society the effects of the application of general rules cannot influence everybody alike. The rule of law is supposed to treat all individuals as equals in theory, however unequal they may in fact be. The order that such a "law" governs, however, is not an abstract theoretical order but a concrete society with a certain class structure. Thus, "The rule of law that presides over this concrete and particular order of things is surely blind to its own particularity." (F.R. Cristi 1984 p.534). But there seems to be more than a "natural blindness" in it; "it is a disturbingly clear-sighted will and desire not to see." (F.R. Cristi 1984 p.534). Hayek's concept of the equal applicability of the rule of law has also been criticized by scholars who remain aloof from any class-based analysis of society. Critiques which emerge from the liberal-libertarian camp and which are based on the same individualistic premises as Hayek's seem quite plausible as well. Thus, Bruno Leoni (1961 pp.68-69) makes the point that formal equal applicability can result in forming an infinite number of groups of people so that law will be applied to them "equally". As members of specific groups such people will be equally treated by laws applied to them despite the fact that other laws will treat other groups differently. Hamowy comments that if equal applicability is to be understood in terms of the formal effects of the legislation then it can hardly stand serious examination since "*most* laws have a harsher impact on certain people than they do on others." (R. Hamowy 1978 p.292). And he even ventures to say - in a rather essentialist mood - that the requirement for equal applicability in Hayek's theory results in "(...) a requirement that all laws apply equally to those the law applies to."(R. Hamowy 1978 p.293).

In Hayek's view of the rule of law, no individual is able to know the aims of a spontaneous order emerging from general rules. It is precisely the knowledge-maximizing function of the rule of law that justifies its existence[1]. Even if one could follow Hayek all the way up to here, it would be difficult to agree with this last point.

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[1] For a view, supportive to Hayek's argument, see A. Shenfield 1976 p.58. Shenfield is at pains to demonstrate the impersonal and unforeseeable character of the capitalist mode of production. The absurdity of his argument however, becomes apparent if one replaces the subject of his methodological approach - namely, the time-honored abstract individual ("one") - with, say, a corporate enterprise. In that case it is clear that the enterprise not only "behaves" according to very concrete long term planning but also that this planning involves the regulations of wide spheres of social life such as political measures, consumptional behavior etc.

Keeping in mind that capitalism is the material basis of the "spontaneous order", one can say that at least some purposes and consequences will be known before hand. For example, even if we achieve the "free society" some people will be employers and some employees[1]. The employers will, as a rule, be much more wealthy than the employees; they will probably be much more famous and powerful as well. Hayek might have said then that they will be so because they are more clever, capable and so on. But the point here is that from arguing that rules are independent of personal purposes it does not automatically follow that one cannot predict any results at all. On the contrary, the consequences emerging from the application of the above proposed rules look very much the same as the situation already existing in our societies[2].

As far as the second kind of rules is concerned, namely rules of organization, their definition and their purposes refer directly to the common concept of law. They should be totally determined by the general rules and cannot question them under any circumstances. It should be noticed that it is only these rules that can be altered by governmental or any other humanly designed action.

In his effort to prove the existence and superiority of the general rules (universal rules of just conduct), Hayek tries to give them a historical as well as logical basis. Hayek's arguments, in brief, are: law is older than legislation. Its existence in the sense of enforced rules of conduct is coeval with society, whereas rules for the organization (commands) were produced long after. The superiority of the first category thus derives from its pre-existence. The problem, according to Hayek, arises from a misunderstanding, common among people nowadays, according to which law governing human action is the product of legislation. This seems to be a result of a constant gain of power of the legislative bodies during the last centuries. There always existed of necessity an authority which had power to make the rules of organization of government and it came as a natural result that this authority could change the rules of just conduct too when such changes became recognized. So, the

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[1] These terms are applied to avoid any evaluation.

[2] This point will be discussed later when Hayek's account of the unforeseeable results of spontaneous orders in relation to the question of social justice, will be criticized.

task of the ruler was, at the beginning, only to enforce rules of just conduct and to organize defence and various other services. Yet, a ruler would find it to his advantage to claim for his rules the same dignity as was generally conceded to the universal rules of just conduct. It seems that for Hayek the undertaking of law-making by the legislator (an individual in previous years, an assembly in bourgeois democracy) was more or less a coincidence[1].

Hayek's account of the superiority of law in comparison to legislation suffers from a profound lack of consideration of actual historical circumstances[2]. By attributing to law a self-contained existence separate from the historical conditions in which it emerged, Hayek is actually granting it its own "life" and history quite apart from the life and history of the people who produced it. This unhistorical approach allows him to argue that Law[3] has remained essentially unaltered throughout history. But that is very doubtful. Even if we accept the term law (with or without capital "L") to describe the conditions under which a primitive group of people were kept together, we cannot regard the point that this law had the form of enforced rules as self-evident. It is much more probable that the reasons keeping people together did not follow from the enforcement of rules but from mutual interest. The general "laws" existing in such societies were not dressed with the sovereign attire in which laws appeared later on in history; they did not stand above society, determining in an alienated way how this society should function. It is only through the existence of the state that law acquired its contemporary "sovereign" sense. The difference between "laws" in primitive societies and legislation in our societies can be asserted by contrasting the free, voluntary respect of the members of the former with the obligation required by the latter. Today, the most powerful leader, the most sovereign constitution has of course much more "authority" than the "elders" of the tribe but

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[1] F.A. Hayek 1973 chapter 4. Hayek recapitulates the "historical" account of the rule of law in most of his major works. For example, see F.A. Hayek 1983 pp.29-32.

[2] On that, see also R. Vernon (1976 p.266). Vernon considers Hayek's approach as profoundly non-historical. His categories of association are abstract types rather than social systems or stages, he says.

[3] With capital "L", that is, the abstract and general *conception* of law rather than existing law itself.

they cannot have the voluntary and undisputable respect that they used to have[1].

To this extent, and only to this extent, it is true that "laws" were not something which men could make at will (as Hayek maintains) but this was not due to a tendency inherent in the individual to accept metaphysical values but to the simple fact that human will was objectively limited. Man was not determining his life, not because he did not want to, but because he could not. Hayek seems to forget this and compares primitive societies with those of the twentieth century directly as if they both had the same abilities to determine their own form as well as the natural world.

Hayek's view leaves the creation of law outside the social process[2]. It is Hayek's expressed belief that law creates societies and not vice versa. What he fails to explain sufficiently,however, is where and by whom law is created. Furthermore, it is Hayek's firm belief that "There always existed of necessity an authority which had power to make law of a different kind, namely the rules of the organization of government (...)." (F.A. Hayek 1973 p.90). It seems that this assurance contradicts his own main idea that law is older than legislation since it now presents the state as coeval with law. This arbitrary conclusion arises from Hayek's desire to legitimize "government" (i.e. the state) as an eternal organism. The reason why he is led to it lies in his inability to understand law as a social relation. Primitive "laws" did not derive their power from coercion but from effortless respect; so did the "legislator". This was possible because, and in so far as, all members of the community had compatible interests.

Legislation, in the sense of a separate function of particular people, appeared later, exactly as Hayek says. But the point is that it did not appear as a supplement to primitive tribal law; on the contrary it appeared as a confirmation that the old society had died along with its primitive law, and that the new society that emerged should make its own rules of organization suitably to its own needs. Hayek, himself, seems to realize the mutually exclusive character of "tribal" and "positive" law. After

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[1] For the complete argument, see F. Engels, in K. Marx and F. Engels 1970 p.577. For further Marxist reference, see G. Plekhanov 1940. For more recent accounts, see A. Rakitov 1982 and P. Anderson 1988.

[2] See also the "historical" objection raised against the creation of the rules of law, in Manin 1983 p.53.

all, his "Great Society" is the direct negation of the "tribal state" in which humanity was living. The distinguishing and fundamental characteristic of this new social order was that it had to serve a social structure involving disparate interests. Primitive "law" was not effective any more precisely because it did not use force to make people follow it. As soon as the social structure changed, i.e. as soon as interests different from and opposed to each other appeared in one society, the need for an enforced legislation appeared too. This legislation could not depend on respect any more. It had to give itself a supra-social appearance based on force in order to make people with conflicting interests obey.

The essential point, therefore, is not whether or not there were individuals or assemblies which had some law-making power in primitive societies but that law, as a supra-social corpus of enforced commands, appeared as a result of changes in the social structure of such societies. In that sense, we can say that law is a result of necessity. It does not reflect the arbitrary subjective "will" of the legislator but it does reflect the concrete stage of the development of social relations in the society it is striving to order.

Hayek appears to base the essence of his argument exactly on the point that since law is not an act of the deliberate "will" of the legislator it does not express any "will" or interest at all. But the fact that a general law may not be the expression of the "will" of the individual legislator, taken in an abstract subjectivist way, cannot lead logically to the total negation of any kind of expression of will or interest through law.Again the essential point is that, as Hayek admits, law is responsible for the setting of the overall order. Therefore, it is the law that expresses the actual social relations, albeit in an abstract and mystified way. The fact that Hayek deprives human beings of their ability to determine their lives and thus attributes to law a superhuman character is then an example of the application of his philosophical conservatism in politics. This conservatism has already been accounted for in the previous part. Broadly speaking, it is the equation of all knowledge with "our" knowledge and the further delimitation of the latter to such things as are man created. This, in turn, results in an *a priori* limitation of human action (even in its potentiality) to an extremely restricted realm conceived of as the realm of humanly created phenomena. The rest of actuality thus becomes, equally *a priori*, forbidden territory for rational

conscious activity. Law, in Hayek's account, is obviously pushed into the realm of the beyond. Notwithstanding this point, a difference might be thought to exist between classical conservatism and Hayek's account. Hayek admits that law is "man made" but, he adds, not "man designed". Nevertheless, the fact that law is considered as "man made" is in its essence irrelevant; what counts is that it cannot be changed *because* it cannot be designed[1].

Considering "law" as socially "neutral", Hayek proceeds to the critical question of who is the ultimate authority, who limits the legislator and becomes the source from which he derives his authority. The answer here is, surprisingly enough, "the common opinion". By opinion Hayek means "a common tendency to approve of some particular acts of will and to disapprove of others, according to whether they do or do not possess certain attributes which those who hold a given opinion usually will not be able to specify" (F.A. Hayek 1973 p.92).

Formally speaking, the definition of "common opinion" as the ultimate authority hardly makes any sense. Hayek maintains that the ultimate power of society is the common approval or disapproval of some acts according to criteria that cannot be specified because reason is unable to understand or guide man in the search of such principles. Man is thus expected to approve or disapprove of actions le d by superstitions and myths[2]. Common opinion then is something that nobody is able to specify rationally. Hence, the "definition" proves that the subject cannot be defined[3].

What Hayek refers to, however, is, once again, a tacit knowledge which can only be crystallized implicitly in tradition. Common opinion, then, far from having anything to do with Rousseau's general will, is only a more politically acceptable way of referring to "tradition". It is that sum of unarticulated rules that find their way into tradition that will prescribe, according to Hayek, which acts of will will be approved and which disapproved. What is certain of this definition of ultimate authority is that

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[1] That this differentiation does not challenge conservative premisses can also be asserted by the similarity of Hayek's thought on that matter with that of the prominent conservative M. Oakeshott.

[2] See for example, F.A. Hayek 1952b p.162.

[3] Thus, C. Kukathas (1989 p.158) notes on the matter of the criteria of justice according to which a change to the rule of law might come about that "Hayek seems both to assume that there do exist such principles and to deny that they can be identified.".

it leaves many questions, crucial for the political form of a society, essentially unanswered. Thus, it is highly possible that common opinion may tend to approve of acts of will of an authoritarian character. In that case, and insofar as no infringement of its formal characteristics will occur, the "Great Society" can rightfully be identified as an authoritarian society[1]. And again, even if we assume that common opinion tends towards a more liberally orientated social organization, it seems that the far more important question is who will interpret that highly ambiguous implicit common opinion and how.

Hayek takes common opinion as the ultimate authority in a society because he unhistorically presupposes that this society, and the consequent prevailing common opinion that emerges from it traditionally, can be identified (however broadly) with a liberal order. But, firstly, this can historically hardly be taken for granted and, secondly, Hayek is logically unable to establish an argument which will meet these points. The problem is, thus, twofold. On the one hand, it simply is not the case that common opinion was and is always favorable to a liberal social order. On the other, if that order is *a sine qua non* for common opinion to become ultimate authority, then Hayek's purposeless evolutionism collapses. For, in that case, one would be in a position of specifying what the common opinion will approve and what it will not; and the result is bound to be that it will approve of the "Great Society". The unfortunate step here is that the conclusion is already included in the presupposition.

By identifying the results of this ambiguous process with the ideals of "Great Society", then, Hayek not only uses some very definite criteria (which, nevertheless, are supposed not to exist...) but he also determines the results of the whole procedure. It is only towards a certain kind of order that it *should* lead[2]. If we try to place this argument of common opinion as the ultimate power within the general Hayekian conception of democracy, we will find further problems. For, if common opinion is the ultimate power, consequently it should be the source of all values. But Hayek rejects this reasonable result of his own methodology in two ways. First, he believes

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[1] Notice that this is more than a remote possibility and that Hayek indeed argues explicitly for the compatibility of liberalism and authoritarianism.

[2] For a similar point, see Manin 1983 p.53.

in the existence of values *per se*; second, he repeatedly demonstrates his profound distrust towards the political expression of common opinion.

Finally, by law of legislation, Hayek means all positive law, including the constitution. Financial legislation and administrative law (including the function of police forces) are also regarded as falling within the same category. These ideas, combined with another main belief of his, namely that the term "government" should be used rather than the term "state", lead to the conclusion that legislatures and assemblies are governmental bodies "whose chief activities were of the kind which ought to be limited by law (...)" (F.A. Hayek 1973 p.130).

The legal expression of the same thing is to be found in the distinction between private and public law. Hayek introduces "the distinction between private and public as being equivalent to the distinction between rules of just conduct and rules of organization" (F.A. Hayek 1973 p.132). Private law, the rights of the individual under capitalism, is thus presented in a supra-social form, reinforced by a metaphysical power and assured of its dominant position; "public law passes but private law persists", Hayed argues (F.A. Hayek 1973 p.135). Public law, in contrast, is adjusted to the limited concept of government, stripped of any power (apart from its obligation to serve private law), accused of all the evils of contemporary society and threatened with drastic limitation in the future.

2. "Government" instead of "State" - Merely a Change of Terms?

The distinction between supra-social law and legislation paves the way for a further differentiation in Hayek's theory, that between the term "government" and the term "state". In fact Hayek proposes the complete abolition of the latter term and its replacement by the former. In *The Constitution of Liberty* he offers no explanation for this change, whereas in the first volume of *Law, Legislation and Liberty*, he feels the need to explain this decision. "In English it is possible and has long been usual, to discuss these two types of order in terms of the distinction between "society" and "government". There is no need in the discussion of these problems, so long as only one country is concerned, to bring in the metaphysically charged term "state". It is

largely under the influence of continental and particularly Hegelian thought that in the course of the last hundred years the practice of speaking of the "state" (preferably with a capital "S"), where "government" is more appropriate and precise, has come to be widely adopted. That which acts, or pursues a policy, is however always the organization of government; and it does not make for clarity to drag in the term "state" where "government" is quite sufficient. It becomes particularly misleading when "the state" rather than "government" is contrasted with "society" to indicate that the first is an organization and the second a spontaneous order" (F.A. Hayek 1973 p.48). Thus, it would seem that Hayek only proposes to use a more accurate term in the place of "state".

Hayek's objections here are, firstly, that "state" is a "metaphysically" charged term. Secondly, the term was adopted under the influence of continental and particularly Hegelian tradition and, thirdly, it is always the organization of government which acts, or pursues a policy. As far as the first two points are concerned, it should be noted that Hayek does not advance any argument in order to underpin his objections, and this can only be interpreted as a weakness. Moreover, he seems to base his case on a dogmatic total negation of the continental philosophical tradition (and Hegel in particular). It is worth saying that Hayek never presents a total view of what he calls continental philosophy and yet he continually uses it as a synonym for dogmatism and metaphysics[1]. Perhaps it is one more of those views that need no explanation because they are self-evident. One way or the other, the condemnation of a term as metaphysical simply because it derives from a theoretical tradition different from his own, far from being scientific, consists of a dogmatism in itself.

The reduction of the state to government plays a crucial role in Hayek's theory. For Hayek, all social entities, including society as a whole, exist as sums of individuals and government is no exception. When Hayek says that it is only the government that acts or pursues a policy, he means that it is only individuals who decide what to do and act towards that direction. But this conception is quite

[1] As R.F. Drinan points out, "we are simply expected to accept on faith, and adopt as our own, Hayek's fear that socialism has so influenced modern language as to render redefinition of its most important terms obligatory. We are also expected to agree that the definitions Hayek provides are the most suitable replacements." (R. F. Drinan 1980 p.627).

debatable. In the strict sense it is not the individual members of the government who act. The individuals who constitute a government decide and act only as members of that government, never as isolated units. This has a twofold meaning: the government acts as a whole in that it has to pursue a policy which usually needs the coordination of the actions of its individual members. That much Hayek seems to accept. What he does not accept, and what is by far the most important point, is that government has a quite unique status in social organization very different from that of any other group of individuals[1]. The status which distinguishes government from all other groups derives its existence from the fact that it has the "legitimate" right to materialize its decisions, which latter concern society as a whole. Thus, government decides that an action should take place but the action is realized through the countless organisms that the government controls, i.e. the state apparatus. Hayek's argument is that we do not need the "metaphysical" term "state" because "government" is enough: why do we have to assume the existence of something more complicated when it is always the "government" that decides? But this appeal to the "obvious" is misleading. Nobody - and certainly not Hayek - could imagine a government without the whole strictly organized mechanism that composes the state. The image of a group of people who decide on various matters and, after announcing their decisions, rely on the good will of their fellow citizens to materialize them, is certainly not Hayek's image of the "Great Society"[2].

Hayek's attempt to reduce the state to a mere sum of individuals goes hand in hand with his effort to delimit some functions of the state drastically. His aim is primarily the social functioning of the state; but he is also concerned with "modernizing" the economic and ideological functioning. Secondly, by identifying government with the individuals who compose it and by maintaining that state and personified government are two words for the same thing, he is excluding a very

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[1] For a classical libertarian account of the problem which starts from the assumption that a direct comparison between government and other groups in society is legitimate, see R. Nozick 1988 especially chapter 1.

[2] R. Nisbet, for example, argues explicitly for a strong government and a decentralized and "inconspicuous administration" (R. Nisbet 1986 p.41). Hayek is reluctant to promote similar arguments explicitly, apparently because of the implications they tend to generate in the political appeal of such a theory.

important part of the state from his "critical" approach by definition. This part, which is supposed to be independent from the state[1], consequently acquires an impermeable status: it is a part of the spontaneous order and, therefore, one cannot criticize or alter it since one can never get to know it. And that goes both for the various "pressure groups", such as the trade unions, and for the government itself which is thus relieved of the pressure to take any drastic steps towards the amelioration of the "social order". This approach gives Hayek two advantages: on the one hand, he can "criticize" government, arguing that all the evils of society are due to the misjudgments or faults of the persons who compose it; on the other hand, he can keep in a relatively safe place - i.e. beyond the reach of criticism and, above all, practical political action - some of the most important functions of the state. In fact, this attempt to claim that a considerable part of existing problems are beyond the reach of human abilities is apparent throughout Hayek's work and in the field of politics it acquires cardinal importance in his "Model Constitution".

What must be noticed, here, is that Hayek is trying to limit the content of the *term* "state" rather than the state itself. In the event, the latter emerges as more powerful after his critique has taken place. That Hayek's intention is to delimit the content of the term "state", is also shown in his insistence on separating "politics" (i.e. government actions) from "economics" (i.e. the function of the market)[2]. But, as one can easily notice, what is left out of both categories is, characteristically enough, production itself. The structure and functioning of the latter is treated (if treated at all) as a mystifying process which takes place outside politics and, up to a point, outside economics as well[3]. In that sense, Hayek's proposal is indeed a proposal for a limited government. But if we consider the state as an active participant in the process of production itself, then Hayek's proposal is reduced to a simple demand for less interference in the last stage of this process - less interference in the market only; but not less - in fact, sometimes more - interference in the relations of production

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[1] In reality, it is somehow supposed to be integrated in the concept of the free market.

[2] See also N. Barry 1987 p.38.

[3] Certainly outside any rationally comprehended economic activity, since the only rational activity that Hayek allows for is activity of individuals in the market.

either in the sense of the enforcement of some abstract rules of law, or in the sense of direct suppression.

A basic element in Hayek's thought is that he never aims to question contemporary Western societies so far as their socioeconomic foundations are concerned; on the contrary, he usually avoids mentioning all fundamental problems related to capitalism as such - while *at the same time* he *invokes* capitalism - and when he is obliged to do so he alters them and presents them as human imperfections and misjudgments resulting from an erroneous theoretical point of view. That is exactly Hayek's intention when he replaces the term "state" with "government". This replacement allows him to attack present "governments", and to suggest all sorts of minor theoretical changes - and with that he comes close to Popper's "piecemeal engineering" once more - "if a free society is to be preserved".

Concluding this point, crucial for an understanding of Hayek's theory, it must be noticed that the use of the term "government" is not a simple correction of a mystifying term[1]. What Hayek calls "government" is far different from what comprises the state, and, therefore, it would be incomplete to criticize it simply as an unfounded terminological innovation. In fact, it is an illegitimate reduction of some parts of the state functions to the supposedly superhuman "free" market order and a parallel reduction of some other parts (which are now thought of as government actions) to personal failures. In the following sections an attempt will be made to develop the implications of this "terminological" correction.

[1] Indirect support on that point can be derived from the fact that most of the open advocates of strong and authoritarian states argue precisely on the same grounds as Hayek. For example, see R. Nisbet 1986 p.41.

SECTION B: Hayek's Ambivalent Attitude to Democracy

1. The Theoretical Problem

Hayek discusses the problem of democracy extensively. His main ideas are examined here under two headings. The first refers to the nature of the concept of democracy in general. The second to its applied form as it is presented in the developed capitalist countries today. Thus, the first sub-section tries to illuminate the theoretical basis of the concept, while the second deals with the contemporary malfunctions of the applied idea and attacks the actual institutions of the political organization.

Hayek tackles the question of democracy within the frame that he has created by the presentation of his conception of the rule of law, that is, according to the distinction between laws which are responsible for the overall shape of a "social order" and commands which merely regulate some specific parts of that order but should not interfere with its general structure. Politically, this distinction reemerges as the separation of the individual sphere of action from the state[1]. This distinction, which is only another expression of the classical bourgeois distinction of the civil from the political, and the consequent confrontation of its two poles as mutually antagonistic, self-contained categories, serves as the logical basis for the "legitimate" demands of the former for the least possible interference in its internal affairs from the latter. Thus, the state emerges as a means to the fulfillment of the ends of civil society. It is within this scheme that Hayek develops his view of the instrumental value of democracy. "Democracy is essentially a means, a utilitarian device for safeguarding internal peace and individual freedom" (F.A. Hayek 1944 p.52) and, "being a method, [democracy] indicates nothing about the aims of government." (F.A. Hayek 1960 p.104).

In Hayek's theory, then, the separation of the civil from the political appears

[1] For the determinative importance of that distinction in the neo liberal thought, see also N. O' Sullivan 1989 pp.4-5.

as a constant *desideratum*. At the same time, this approach delimits the horizon of "freedom as absence of coercion". The "Great Society", of itself, does not appear to be incompatible with coercion as long as an objective delimitation of the political by the rule of law allows individuals to shape the course of their future actions[1]. In that sense, and in the mechanistic spirit that has already been mentioned, Hayek comments that "a democracy may well wield totalitarian powers, and it is conceivable that an authoritarian government may act on liberal principles." (F.A. Hayek 1960 p.103)[2].

Ultimately, democracy is justified on the grounds that, firstly, it is "the only method of peaceful change that man has yet discovered"; secondly, "democracy is an important safeguard of individual liberty"; and, thirdly, "(...) because a great part of the population takes an active part in the formation of opinion, a correspondingly wide range of persons is available from which to select." (F.A. Hayek 1960 pp.107-108)[3].

Strictly speaking, from these three arguments meant to support democracy, only the second refers to an ultimate end. Hayek never maintained that "a peaceful change" or "an effective method of educating the majority" are the ends towards which a society should aim. Therefore, it is only as "an important safeguard of individual liberty" that we can judge democracy. Hayek, however, seems to doubt this. His point is that "since coercive power must in fact always be exercised by a few, it is less likely to be abused if the power entrusted to the few can always be revoked by those who have to submit to it." (F.A. Hayek 1960 p.108). Thus, the argument is based on the possibility of the people revoking the power entrusted to their governors. How is this applied in the "democratic" societies that he proposes? As we shall see, his proposals for an ideal government seek to restrict the right of revoking those in power rather than to extend it[4].

In actual politics, however, it would seem that the only "meaningful" right of

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[1] "The state and other collectives are viewed as the enemy but, as a possible paradox, the state is granted a monopoly of violence in society as a means of preventing others from infringing on individual rights." (P.W. Dyer and R. Harrison Hickman 1979 p.383). The paradox however, only holds in the realm of formal logic, as the argument in this thesis seeks to demonstrate.

[2] Hayek's formalism is also stressed by R.F. Drinan 1980 p.626.

[3] For a sympathetic account of Hayek's concepts see also G. Dietze in F. Machlup 1977 p.139.

[4] See also D. Meiklejohn 1980 p.121.

the people is the right to vote. But this has proved to be a very elastic criterion, one able to justify almost any governmental action. On the one hand, people may vote for a certain government not because they like it particularly but because they think, or they are made to think, that it is the least harmful solution. This is a typical example of what happens in Britain and the U.S.A.. On the other hand, people may believe that there is a need for an oppressive government (as they did in Germany with the Nazis). This possibility illustrates the inadequacy of Hayek's utilitarianism. If the ultimate value was indeed individual freedom, then the choice made by each and every individual to vote for a government that could interfere, in the most arbitrary way, in all spheres of life, should have been respected by Hayek. In an analytical sense this choice is a free choice, but its results would certainly differ greatly from Hayek's "Great Society"[1]. In this case individual liberty is eliminated voluntarily. But since liberty is for Hayek a value *per se*, such occurrences can never be justified. Hayek is aware of this danger; so in the end he comes up with a conclusion that practically reverses the validity of his own argument: "The prospects of liberty depend on whether or not the majority makes it its deliberate object. It would have little chance of surviving if we relied on the mere existence of democracy to preserve it" (F.A. Hayek 1960 p.108).

Liberty is thus, once more, presented as a value *per se*, founded on moral-imperative grounds. Hayek refutes the essential validity of the utilitarian approach he has introduced above; he also refutes the "scientific evolutionary" approach. Liberty's prospects lie in its being accepted as a deliberately chosen object by the majority. This also brings forward a point mentioned previously - namely the appeal to the majority in a rather eclectic way. Liberty is the ultimate idea; therefore, its value does not depend on its acceptance by any majority. At the same time, its existence seems to depend chiefly on whether it will become the deliberate object of the majority or not. Furthermore, the majority is the determinative factor in order for liberty to exist, while at the same time majority rule poses a severe danger to its existence in Hayek's view....

As far as his first argument is concerned, there is no indication in Hayek's

[1] See also N. Barry 1979 p.59.

work of what a peaceful change means and why this is desirable. Hayek seems to regard peaceful change as a separate value towards which democracy is conducive. If that is the case, then Hayek should have explained why peaceful change is a value and in what way it is related to individual liberty. He should also have indicated the ways in which it promotes liberty. He does neither. A suggestion could be made that what Hayek means here by peaceful change is an equivalent of the maintenance of an overall order. But in that case democracy is taken as a synonym of conservatism; democracy is effective in so far as it promotes social stability and order - a statement quite revealing in itself.

By social change, then, Hayek means just a change of government - i.e. the replacement of the individuals who make up the government by some others. What, however, distinguishes democracy from, for instance, monarchy or dictatorship, at least formally, is that the majority decides when this change will take place and who the successor will be. In other words, the essence of democracy turns on whether it provides real options of different types of government or not. But that is by no means what Hayek thinks. Apart from being wrong, his argument is quite conservative (in the essential meaning of the word) too. Arguing that democracy is desirable because it can provide peaceful changes, means that he is taking the whole social structure as naturally given and eternally desirable. Indeed, at this point, Hayek does not seem to be prepared to discuss the social organization of capitalism under any evolutionary perspective. He is simply interested in making this given social organization somehow more effective.

So far as the third and last argument is concerned, a comparison of this theoretical issue with the real political conditions of any Western democracy of the 20th century will be enough to demonstrate its insufficiency. It is certainly not a characteristic of capitalist democracy that "a great part of the population takes an active part in the formation of opinion". On the contrary most of the population do not even care how these opinions are formed and by whom. With this, however, we come to a more essential point of criticism. The question that suggests itself here is, to what extent does Hayek think that the participation of people in politics is desirable. For Hayek, as has been argued earlier, the state is an indisputable necessity in a "free"

society. Its essence lies explicitly in its coercive function[1]. State coercion, however, is desirable as long as it is a safeguard of individual liberty. "This is possible only by the state's protecting known private spheres of the individuals against interference by others (...)." (F.A. Hayek 1960 p.21). The private sphere (the civil), then, is conceived of as the protected domain of liberty. The aim of the rule of law is to safeguard the distinct character of the civil against unwanted interference (F.A. Hayek 1960 p.21). This negative, protective role of the state, nevertheless, has another aspect as well which never appears explicitly in Hayek's works. Effective delimitation and protection of the civil by the political is only another way of demanding the latter's independence from the former. Thus, in the "Great Society" the state is in fact granted the autonomy it needs when it stands beyond society and confronts it; it is only the other side of the same coin. The process of the delimitation and protection of the civil then seems to carry as an inseparable "side effect"[2] the prevention of the politicalization of the civil society. It is the consolidation of that separation that Hayek regards as the ideal type of political organization[3]. Liberal republics, however, especially under the influence of socialist ideas, tend to compromise the distinction between civil and political. It is precisely against that compromise that Hayek launches his attack (F.A. Hayek 1976 chapter 12)[4].

As a further indication of this, perhaps we should note the change that Hayek's justification of democracy underwent. In *The Constitution of Liberty*, when he first presented the three arguments for the justification of democracy systematically, he stressed the importance of the last argument[5] according to which democracy is

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[1] See for example, F.A. Hayek 1960 p.21.

[2] That this is not a simple side effect will be argued later on.

[3] Hayek is by no means the only one who upholds that view. N. Barry, for example, explicitly states that "Most people display a healthy apathy towards politics, an indifference, which is only harmful when society is heavily "politicized"" (N. Barry 1987 p.198). R. Vernon makes the same point for Hayek and Popper (1976 p.262).

[4] For G. Walker that point is self-evident. Thus, "Democracy has not proved successful at *preventing this politicization* of the economic process. In fact Hayek is convinced that democracy in its present forms exacerbates and encourages this politicization, *and is thus not* the safeguard of freedom that is commonly thought to be." (G. Walker 1986 p.19 emphasis added).

[5] "This seems to me the most powerful (..)" (F.A. Hayek 1960 p.108).

desirable because it is the only way of educating the people in political matters. This argument was in such an apparent contradiction with the spirit of the presentation of the whole problem of political organization that, only six pages after stating it, he comments (with no apparent dissatisfaction) that ideas concerning the form of political organization must be left to enlightened individuals since "The practical [sic!] man concerned with the immediate problems of the day has neither the interest nor the time to examine the interrelations of different parts of the complex order of society. He merely chooses from among the possible orders that are offered to him and finally accepts the political doctrine or set of principles elaborated and presented by others." (F.A. Hayek 1960 p.114). In *Law Legislation and Liberty*, however, he corrects himself by stating "I rather regret that in that book [*The Constitution of Liberty*] (p.108), carried away by de Tocqueville, I described the third of the three arguments in support of democracy which I mentioned, (...), as the "most powerful" argument." (F.A. Hayek 1976 p.180). And he concludes by suggesting that the major argument is that of peaceful change in government, thus strengthening the separation of the civil from the political and attributing democracy strictly to the latter.

In order to secure the depoliticalization of civil society, Hayek employs three arguments. Firstly, by the exclusion of the vast majority of state institutions from his definition of "government", he manages to end up with an extremely limited definition of the "political". Secondly, this limited character of the political secures an essentially impermeable area of apparently non-political ("individual") activity. Thirdly, when arguing for a democratic form of state, he makes it clear that the adjective can only be attributed to a method of government and that no other social institutions (such as education or market relations) can be meaningfully characterized as democratic. Thus, the meaning of democracy in Hayek's theory acquires a paradoxical character. His attempt to distinguish between the civil and the political and to delimit the latter results to the impossible situation of defending a "democraticization" of the state, while considering the "democraticization" of society as the chief threat against the "Great Society". This is clearly shown in his (at the least) unstable attitude towards majority opinion and majority rule.

It has already been suggested that a delimitation of the term "state" does not necessarily lead to its weakening. It can now be argued that in Hayek's theory this

alleged delimitation implies an actual strengthening of the state itself to the point where it becomes authoritarian. This argument questions directly Hayek's verbal commitment to democracy. For, although Hayek has stated that the "Great Society" is compatible with authoritarianism (F.A. Hayek 1960 p.103) as a result of his distinction between the civil and the political, he still maintains that the latter is incompatible - and in fact the opposite - with democracy. The fact that Hayek argues explicitly for the depoliticization of civil society however, must not obscure the equally undeniable fact that his argument results in the autonomy of the political from the civil and thus in the constant possibility of the former acquiring an authoritarian form. That means that the claim for a politics-free, self-regulating society can also be read backwards as a claim for an autonomous self-sufficient political authority, that is, an authority in practice unaccountable to society. This process becomes clearer when we take into account the necessity that Hayek attributes to the existence of the state as the only source of legitimate coercion. The dethronement of politics from society is achieved by attributing to the latter a self-regulating, spontaneous character. The negative role of the state in such a society however, at least to the extent that it is conceived as a necessity, can only be ensured by the state's own action. It is self-regulative activity that guarantees the negative existence of the state and the consequent depoliticization of civil society; and it is that same self-regulative activity that can be considered as making possible the state's active preservation of the monopoly of political power as well.

The spectrum of authoritarianism does not haunt Hayek's theoretical schemes only[1]. On the contrary, it reveals its real functioning when one considers that behind the abstract formal theoretical schemes of the rule of law and the separation of the civil from the political lies an actual attempt to justify and promote a concrete social and political mode of organization. Even if actual society is the product of the undesigned natural evolutionary selection of competing traditions, as Hayek maintains, it is still a real concrete society. And that society, which is structured according to a particular class structure, will not represent everybody in the same way. The fact that Hayek considers the stratification concerned as a "natural ranking", as a result of

[1] See also S. Brittan 1980 p.33.

some individuals adopting more effective rules than others, can only in fact strengthen the conclusion that it is for the preservation of the existing society that the political blueprint of Hayek's strives, irrespective of its authoritarian or "democratic" verbal disguise. It could be argued then, that to the extent that Hayek refers to capitalism as a socio-economic formation he has to argue for some kind of democracy, because, after all, it is under bourgeois democracy that capitalism exists in the Western countries. At the same time, he constantly attacks the concrete form of social organization that capitalism acquired in our days, especially as far as its democratic elements are concerned. It might be unfair to accuse Hayek of being the only bourgeois philosopher who does so. In fact, the insufficient character of bourgeois democracy reflects one of the main contradictions of capitalism on the political level - namely that it needs both freedom and coercion at the same time. It is a necessity that people should be "free" to enter into economic transactions, while at the same time this freedom is extremely limited as far as the option of the determination of their own lives is concerned. In that sense, Hayek's account of democracy captures the contradictory process of the growth of capitalism adequately. He is constantly obliged to delimit and alter the meaning of democracy in order to defend his ultimate end - the preservation of capitalism.

His profound distrust of what he calls majority rule is only an expression of the above process. "We have no ground for crediting majority decisions with that higher, superindividual wisdom (...)" (F.A. Hayek 1960 p.110). "Moreover majority decisions are peculiarly liable, if not guided by accepted principles, to produce overall results that nobody wanted" (F.A. Hayek 1960 p.111). Phrases like these are common in Hayek's work[1]. Notice the eclectic attitude towards the role of majorities in a social order. On the one hand, "Great Society" essentially rests on the unquestioned adoption of its principles by the majority of its members. On the other, the majority should not be granted any superindividual wisdom. The crux of the problem seems to lie in the respective functions that the majority undertakes in the two cases. In the first case it is conceived of as an abstract aggregate of equally abstract individuals.

[1] In that sense, "There is certainly no logical connection between democracy and freedom" (N. Barry 1987 p.197). See also T.R. Machan 1982 p.332.

As such it cannot challenge any part of the actual social order. To make matters even clearer Hayek presupposes the "adoption" of the "Great Society's" principles to be a "passive" acceptance of unarticulated rules. In the second case, the majority acquires (potentially) an ontological substance and a concrete political power. Thus, its actions can challenge the existing social order. In that sense, it becomes an explicit threat to the "Great Society". It is in this second case, then, that Hayek regards the majority's concrete (potential) political power as a plague from the standpoint of his social theory.

Democracy then should only be a device in the service of a certain end, the "Great Society". When it is not, it becomes condemnable as such. For Hayek, democracy is desirable as long as it is kept within certain "common principles" abstract and eternal, namely the principles that guide the economy and politics of capitalism. When we come to the point where the growth of democracy becomes an obstacle to the growth of capitalism then the former should be "altered" so that the contradictions may be surpassed peacefully. This logic is neither new nor unusual. What, however, is of some novelty, is the frank, perhaps even cynical, way of its exposition.

2. Malfunctions of Contemporary Democracy: The Problem in Practice

After stating the problem in its general form Hayek proceeds to a more concrete critique of democracy as it appears in contemporary societies. Democracy, he argues, is not an ideal state. Its main problem is that it was given unlimited power. The concept of majority rule as the source of ultimate power is fundamentally wrong. Instead, democracy should be the safeguard of individual freedom by accepting the limitations imposed by a higher "nomos". But nowadays this does not happen because of the belief that the control of government by the democratically elected legislature could adequately replace the traditional limitations (F.A. Hayek 1979 chap.12 esp.par.2).

The topic of democracy, conceived of as majority rule, is not altogether

unproblematic in the liberal tradition[1]. In Hayek's case, majority rule is confronted almost with open hostility. There has been a long debate on whether the concept of majority rule has any application in contemporary Western societies[2]. There is a long tradition of critics, occupying different positions in the ideological spectrum, who have repeatedly argued that majority rule in Western societies is more or less a formality. More recently, it has become a common belief among people that not only do they not rule but there is no point in trying to participate at all. Many theorists have argued for the death of democracy or even for the death of politics, basing themselves on those facts. Hayek's arguments seem to point in a different direction. Not only is majority rule not a mere formality; it is also an actual threat. Hayek believes that it is because of the application of the idea that majorities should rule, that Western democracies tend to perish. It is because it has become both an accepted principle and a prevailing practice that the people of Great Britain, for example, rule, that democracy has imperiled liberty in this country. This concept overlooks certain facts that seemed to be undeniable even among liberals. How is Hayek going to explain the general apathy that prevails in Western societies if he holds the view that majority rule is both an accepted principle and a practice? How is he going to explain abstaining from elections and from any social activity? It seems that at times Hayek takes some very disputable things as granted.

What then, is Hayek's suggestion in order to overcome the problems created by the "application" of majority rule? Majority rule should be replaced by the consent of the people, Hayek argues. It should "be limited, not by another superior "will" but by the consent of the people on which all power and the coherence of the state rest" (F.A. Hayek 1979 p.3). But if majority rule was accused of being a mere formality, mainly because of its abstract character which did not permit any identifiable outcomes, what could be said about the consent of the people? Of course, Hayek takes once again for granted that the consent of the people is an existing possibility. In fact, he takes it to be an actuality, since he states that the power and the coherence

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[1] J. Gray also considers democracy as the cause of decline of classical liberalism (J. Gray 1986b p.92).

[2] For a Marxist account of the status of democracy in the liberal theory, see J. Hoffman 1988.

of any state rest on it (not "should rest")[1]. Even if there was something like a consent, how could it become observable or quantifiable? Hayek does not provide us with any direct answer here.

There are, however, reasons to believe that "consent" is a deliberately abstract and unidentifiable concept. Hayek has argued that the consent of people to certain ideals can be given without the people being explicitly aware of what these ideals are. It is a semi-conscious, spontaneous process during which the people do not need to "know what" the principles are - in the sense that they cannot articulate them explicitly - as long as they "know how" they work. Therefore, the people are supposed to give their consent to unknown principles virtually by definition, and since the coherence of the state depends on this, it follows that the existence of the state implies such consent *a priori*. So, there is a dual abstraction in the concept of "consent". Firstly, it is a consent to unknown principles, and, secondly, it is a consent that exists *a priori* and that cannot be articulated as such.

But that is not the end of the problems that "consent", as the source of ultimate power creates. So far, Hayek's argument, although extremely abstract, had the appearance of the value-free suggestion. He started from the "fact" that the existence of the state rested on an *a priori* consent of the people to certain abstract ideas. His suggestion was that this consent should always be considered as the source of ultimate power. Matters become more complicated when Hayek introduces, apart from the "fact" of *a priori* consent, the contents of people's ideals as well! The power and coherence of the state have ceased to rest on the consent of the people to abstract ideals and now rest on their consent to the concrete ideals of the "Great Society". Hayek not only commits the mistake of articulating ideals that were supposed to be non-articulable, but also seems to argue that the concept of consent is only valid when it refers to the concrete ideals of the "Great Society" - which in turn is supposed to validate the "consent".

It has been argued that the insufficiency of the liberal concept of democracy

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[1] This assumption, however, remains arbitrary since, in Adorno's words, "it is only the unity of the principle of an individualistic society which unite the dispersed interests of the individuals in the formula of their "opinion"" (T. Adorno in T. Adorno (et al.) 1976 p.78).

lies in its high degree of abstraction[1]. If this argument is accepted, then Hayek's propositions on "democracy" appear to be intentionally much more abstract. At the same time, and because of his "renovative" intentions, his propositions on the content of consent reveal the essential political conservatism of his theory. Consent, for Hayek, means an *a priori* submission to the concrete demands of the "Great Society".

Hayek's attack upon majority rule on logical grounds, starts from the point that "government" is necessarily a means of coercion. He, then, introduces the question: by whom should we be coerced? By a majority whose interests could be to oppress the remaining minority or by some abstract rules of just conduct based on universally accepted moral principles?

This dilemma is partial to say the least, since it deprives us of the possibility of having a majority whose interest would be to abolish coercion, at least in the sense of deliberate exploitation, altogether. Moreover, it seems to reach its conclusion too easily, because it presupposes the existence of some universally accepted principles, which in addition are supposed to serve the interest of all individuals. Having introduced the dilemma, Hayek argues in favor of the latter case. The ultimate justification, he says, is that it serves an aim desirable for all - namely to maintain a viable order. "But this justification does not extend further than the need. There is clearly no need that anybody, not even the majority, should have the power over all the particular actions or things occurring in society" (F.A. Hayek 1979 p.6). Furthermore, there is no reason to believe that because a majority wants something, this particular desire is an expression of its sense of justice. "There is, therefore, also great need that a majority be required to prove its conviction that what it decides is just by committing itself to the universal application of the rules on which it acts in a particular case" (F.A. Hayek 1979 p.9).

Here, again, Hayek makes a double mistake. He argues for the adoption of abstract universal moral rules not because they serve the ultimate value, i.e. liberty, but because they are supposed to promote a viable order. Hence, the aim is now order, instead of liberty. It can be argued, of course, that it is only within an order that liberty can be conceived. The problem, however, seems to be that if the aim of

[1] J. Hoffman 1988 pp.131-202.

abstract rules is order, an argument should be introduced to prove that by adopting abstract moral rules, order (not liberty) is maintained more effectively than, for example, by sheer coercion. It is one or the other: either Hayek is seeking for an order which will permit a certain conception of individual freedom to flourish, or he is arguing for the preservation of an order - any order - on the grounds of it being effective - i.e. viable. Therefore, the fact that Hayek believes that the preservation of the actual order - namely capitalism - is a *sine qua non* for individual freedom to be achieved, remains an arbitrary assumption in terms of his own "scientific evolutionary" approach. The same problem occurs when Hayek says that a majority has to prove its commitment to the universal rules of justice. The problem is that, according to Hayek, the majority (or any number of people, for that matter) does not have to desire things that are "just" as long as its desire is conducive to the preservation of an overall order. And it is obvious that an action that is conducive to the preservation of an overall order might easily be against the moral principles of justice. Hayek again assumes that the abstract moral principles of justice are the principles of his "Great Society" (and in that sense they are not at all abstract) but this assumption remains totally arbitrary.

As it has already been mentioned, Hayek presupposes that coercion by "government" is unavoidable if an order is to be maintained[1]. But this concept undermines his commitment to the reconcilability of the interests of all people because if people's interests were actually reconcilable, coercion would become useless[2]. For Hayek, coercion is justified for the maintenance of order in society as long as it does not interfere with the individuals and their concrete actions. In other words, it is justified as long as it is directed against actions that might put in danger the "Great Society", but it becomes unjustifiable when it is used to prevent the particular actions of individuals which are not opposed to the system. Coercion then is fully justified

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[1] For a similar to Hayek's view, see J. Gray 1986b p.61.

[2] This is not to suggest that all problems of coordination in social relations can be solved completely. What is maintained is that when there will be no irreconcilable social interests *in principle*, the existence of an apparently supra-social, permanent mechanism of coercion will become superfluous.

within the political realm[1]. It is only in the separate civil realm that individual freedom can have any meaning. From the above thoughts, as well as from his whole attitude towards democracy, it becomes apparent that the first task of "democracy" is to eliminate majority rule because of its (potential) harmfulness for the system.

At the same time, the replacement of state by government and the narrowing of the fields for which the latter is held responsible brings forward the political significance of the comment made in the previous section. Government is not, or at least should not be, concerned with the form of social organization. This latter is considered as the outcome of a spontaneous, superhuman process that is independent of the humanly designed actions of government. The obvious political implication of this separation of government from society, is that the sphere of the former is delimited to a series of secondary, piecemeal activities, which should not affect the structure of society. Spontaneous order, thus, becomes a framework that includes all major relations of production, distribution etc.. Government, on the contrary, is a mechanism of coercion, limited to a specific social area, the task of which is the preservation of order. At the same time, the sovereignty of the government in this area becomes indisputable. Its role - namely, the preservation of a concrete social order - which is attributed to it by definition is elevated into its reason for existence. The political is justified as long as it can provide a safe framework for the functioning of the "free" market society. From this point of view its democratic or authoritarian form is obviously irrelevant.

In this way, Hayek accomplishes two things: firstly, by including all social relations in his spontaneous order he can present them as "natural" and unavoidable. Their existence is the result of natural selection and therefore nobody can question them as imposed or arbitrary; secondly, all attacks against a bad government are made on a politically safe ground. Their aim can only be the individuals who constitute the government personally and their actions. The potential danger inherent in connecting the existence and particular activities of a government with the general social framework in which it exists has been exorcised. Bad governments exist and probably

[1] For a revealing argument on the necessity of state coercion, see R. Nisbet 1986 p.55. Nisbet openly admits that the only reason of existence of the state is the conservation of property.

will exist in the future, but that is as far as any criticism may reach. Nobody has either the ability or the right to question the overall order which now includes all major relations of capitalist production. Thirdly, and this accounts for the antidemocratic essence of Hayek's theory, as long as the government can provide for the smooth functioning of the "free" market society its desirability must be taken for granted, irrespective of its form. While this argument may have allowed Hayek to launch a massive attack against the welfare state and, at the same time, keep capitalism unquestioned, it also creates methodological problems in his theory. It has repeatedly been argued that in order to be self-consistent Hayek has to apply the same standards to every form of social organization that exists; and this effectively excludes all evaluative statements based on moral imperatives.

Hayek systematically attacks any institution that may grant some power to the majority, and parliament is no exception. "The electors of a "legislature" whose members are mainly concerned to secure and retain the votes of particular groups by procuring special benefits for them, will care little about what others will get and be concerned only with what they gain in the haggling" (F.A. Hayek 1979 p.9). The result is that decisions will "not be based on judgment of merit but on political expediency" (F.A. Hayek 1979 p.9). "To leave the law in the hands of elective governors is like leaving the cat in charge of the cream jug - there soon will not be any, at least no law in the sense in which it limits the discretionary powers of government" (F.A. Hayek 1979 p.31).

The contradiction that arises in connection with the arguments he produces in order to establish the functional superiority of democracy reflects his unstable views on that matter. On the one hand, he argued that it is to the advantage of democracy that although the coercive power will be exercised by the few it is less likely that abuses will occur because these few can always be revoked. On the other, he states that it is a disadvantage that those in power are likely to act on political expediency rather than merit precisely because they will be afraid that they will not be reelected. Is, then, the right of the people to decide who is going to occupy a certain position at any time an advantage or a disadvantage?

In a way, Hayek's contradiction reflects a real problem of bourgeois democracy. It is true that bourgeois democracy presupposes the right of the people

to revoke their representatives in theory; it is equally true that in practice it has turned out that the representatives depend, not on the people in general but on some groups of the most powerful to get elected and thus tend to act primarily as representatives of their interests rather than advocate "merit" of any kind[1]. But the root of this contradiction is in the inconsistency between the theoretical premises and the actual social conditions rather than in any ideological misconception or practical malfunction. That is why this contradiction is not spontaneous or accidental but constitutes a component part of the bourgeois democracy. It is because people are ideologically conceived as equal, while in their actual lives they are necessarily unequal, that the contradiction emerges. Formal equality in theory can serve as an ideological shield but it cannot conceal actual inequality. Therefore, when one descends from the sphere of formal equality one finds oneself either on the side of those who control society, or on the side of those who are controlled. The fact that the latter might believe that they are controlled by an impersonal spontaneous order (or the will of god etc.) only reflects the ideological form of this control. The actual expression of this process is the "unfortunate" fact that the representatives of the people tend to be concerned mostly with what they get out of their "job" rather than with abstract judgments of merit. In other words, they tend to behave as ordinary human beings in a competitive society; they act as free agents in the market place. Thus, the contradiction exists only as long as the theoretical premises of formal equality are taken into account seriously, but it collapses when one confronts reality according to actually prevailing social relations.

Hayek attempts to suggest a way of surpassing this problem. It is not the right of the people to revoke their representatives that is harmful as such, he says; it is the fact that these representatives have too much power. Consequently, if they are deprived of that excessive power, the right of the people to control them can be maintained. Of course, these "controllable" representatives will be allowed to decide on secondary matters only, but the people can be happy with the illusion that they are the ones who govern. This is indeed a solution to the contradiction; but a solution which implies a move away from democracy and towards political conservatism.

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[1] See also G.L. Arnold 1960 p.101.

These concepts put in danger the very existence of democracy - especially when they are combined with suggestions for a peculiarly stronger government[1]. "If government is going to be strong enough to maintain order and justice we must deprive the politicians of that cornucopia the possession of which makes them believe that they can and ought to remove all sources of discontent" (F.A. Hayek 1979 p.11). In other words, "government" should be strong enough to use coercion against all those who may be discontented but not strong enough to be in their favor. Finally, Hayek's loyalty to democracy seems even more doubtful because of his statement "I must frankly admit that if democracy is taken to mean government by the unrestricted will of the majority I am not a democrat, and even regard such government as pernicious and in the long run unworkable" (F.A. Hayek 1979 p.39). Thus, the lurking tension between democracy and freedom, that haunted liberal tradition, emerges in a clear form. Democracy is no longer a complementary concept to liberty; it is not even simply a different one; it is systematically opposed to it[2].

The point, however, is that Hayek is not a democrat even if democracy does not mean the unrestricted will of the majority[3]. In fact, Hayek is not a democrat to the extent that democracy can put into danger his ultimate end, that is, the "free" market society[4]. If we consider that he wrote his book *The Constitution of Liberty* in 1960, and reprinted it in 1963, under the same dedication, namely, "To the unknown civilization that is growing in America", as well as his whole attitude towards the American social and political system[5] during a period that Americans

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[1] See also J. Dunn 1978 p.28.

[2] See also N. Bosanquet 1983 p.34. Bosanquet argues that in Hayek's theory freedom actually *requires* a limitation of democracy. Moreover, it is the same attitude that enables G. Dietze to comment: "In the modern era, an era characterized by the march of democracy, the rule of law [which is only "the other side of freedom"] has declined in Hayek's opinion" (G. Dietze in F. Machlup 1977 p.129).

[3] Thus, "His confidence in the market is not supported by a democratic consensus" (D. Meiklejohn 1980 p.121).

[4] "It may be that Hayek resents particular special-interest rules less for any lack of majority approval than for their incompatibility with his political philosophy" (R.F. Drinan 1980 p.624).

[5] He considers it as one of the "freest" societies.

themselves are trying to forget[1], we may form a rough idea of what "individual freedom" and democracy mean in their practical application. Hayek's theory of democracy and freedom not only allows him to consider Pinochet's Chile a society that allows individual freedom[2] but it also provides a friendly scholar with the opportunity to "demonstrate" that a typical example of servitude is Sweden (R. Huntford 1980)[3]. The distinction and counterpoising of liberty to politics is bound to justify many such conclusions. For example, some thirty years ago J. Davenport distinguished between liberty and a nation's self-determination. He continued: "It could be that Algeria would be better off if it were made independent of France. But it could also be that such independence would lead straight to the extinction of such human liberty as Algerians now enjoy." (J. Davenport 1960 p.135). In that case liberty has become a synonym for paternalistic rule and open violence. But if such a concept of "liberty" can be used effectively to deny national self-determination, why can not it also be used - in its Hayekian version - in order to deny personal self-determination[4]?

Hayek is trying to provide a "historical" as well as theoretical foundation for his approach. "There is not first a society which then gives itself rules, but it is common rules which weld dispersed bands into a society. The terms of submission to the recognized authority become a permanent limit of its powers because they are the conditions of the coherence and even existence of the state" (F.A. Hayek 1979 pp.34-35). It is amazing how little this trend of thought progressed over the past 100 years. On December the 23rd, 1846 K. Marx was criticizing Proudhon for his false conception of economic categories; a critique which may easily be applied to the above passage. "Thus, M. Proudhon, mainly because he lacks the historical knowledge, has not perceived that as men develop their productive faculties, that is,

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[1] See for example, F. Machlup in Erich Streissler 1969 p.143.

[2] Because "it is more important that government be limited than democratically elected" (N. Barry 1987 p.197).

[3] This amazing conclusion is repeated by H. H. Gissurarson in The Institute of Economic Affairs 1984 p.20.

[4] Not all liberals agree with such open cynicism. See for example, L. Robbins 1961 p.68.

as they live, they develop certain relations with one another and that the nature of these relations must necessarily change with the change and growth of the productive faculties. He has not perceived that *economic categories* are only the *abstract expressions* of these actual relations and only remain true while these relations exist. He therefore falls into the error of the bourgeois economists, who regard these economic categories as eternal and not as historical laws which are only laws for a particular historical development, for a definite development of the productive forces. Instead, therefore, of regarding the political-economic categories as abstract expressions of the real, transitory, historic social relations, M. Proudhon, thanks to a mystic inversion, sees in the real relations only embodiments of these abstractions. Those abstractions themselves are formulas which have been slumbering in the heart of God the Father since the beginning of the world" (K. Marx in K. Marx, F. Engels 1970 p.664).

For Hayek, then, "common rules" exist irrespective of their subjects (social relations). Moreover they seem to derive their existence practically out of no-where. Ideas (rules), however, cannot exist without men and men cannot construct them outside their physical and social environment. This, nevertheless, does not mean that ideas that serve as a theoretical basis for the justification of a particular social organization necessarily express the interests of all people. It is true that a certain amount of compromise is vital for the existence of any society. But this does not mean that this compromise is either a result of the "free will" of every individual or that it works for his best interest. If we look back to all known social formations up to today we will see that each one was so constructed as to serve the interests of one particular sub-total of the people. It would be absurd to maintain that ancient Greek or Roman civilization flourished because the slaves wanted to be slaves or considered themselves as "*res*"; or that the feudal regime was based on the "free will" of the serf to be exploited by landlords. It is equally absurd to maintain that capitalism is based on the agreement of workers to be exploited by capitalists. In each case some ideas were presented as universal but this does not mean that they were universal in fact. It only means that the particular interests of the particular dominant sub-total were disguised and presented as interests of the whole society. As long as this disguise lasts, we can have what Hayek calls "common principles" and "universal values".

SECTION C: Hayek's Critique of the Welfare State

1. The State as Exogenous to Society

Hayek, it has been argued, portrays the state as a mechanism exogenous to society; he takes it to be a mere regulator, instead of an organic part, of society. The personification of the state through the term "government" permits him to argue that any abuse of power is a result of individual choice. Therefore, he claims, government has to be delimited in the application of higher abstract moral values. This line of argument, however, is not free from problems. The first one we shall examine is that of the legitimacy of the assumption that the state is necessary[1]. Hayek claims that the state exists for the provision of certain standards as well as for the maintenance of order. The problem,then, seems to be that the self-regulating spontaneous order, that emerges as a result of an unconscious process, is not self-regulating after all. This argument has been used by many anti-statist libertarians[2]. It acquires an evident importance in so far as the state is considered as a mechanism that stands outside society. The question, thus, is: since orders are spontaneous and self-regulating what is the need to adopt an additional regulating apparatus which, after all, is fully designed? It is doubtful whether an answer can be given to that question if the state is considered as a mechanism exogenous to society.

The second problem that arises here is that of the eternity of the state. Hayek argues that "governments" existed ever since the first societies were put together. So, historically speaking, the state was an indispensable part of society rather than a supra-social apparatus. But the state seems to acquire the same status on logical grounds as well. Hayek repeatedly stresses that "government" is necessary in a spontaneous order for the reasons mentioned above. Therefore, the state appears to be an indispensable part of the "Great Society" as well. On what grounds, then, is Hayek

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[1] The uneasy coexistence of spontaneous self-correcting markets and state regulation is a characteristic of "mild" neoliberals, see N. Barry 1987 p.64.

[2] For a further elaboration of the problematic coexistence of self-regulating orders and the need for an exogenously regulating state apparatus, see also Hayek's own statements in A.J. Anderson 1986.

arguing that the state is merely a humanly designed mechanism exogenous to society?

The personification of the state creates some further problems in Hayek's theory of the state. If the state is to be reduced to the individuals constituting the government then it is only logical to assume that "good" individuals imply a "good" government. If that is the case then what need is there for the complex legal and institutional framework that Hayek proposes in his "Model Constitution"? It could be argued here that for Hayek "good" individuals are those who function according to the Rule of Law and therefore that the legal framework is the principal condition of their "goodness". This objection could have been valid if for Hayek the legal framework was a result of human design. But, since law is an attribute of any order by definition and since that law is independent of human design, it is only logical to assume that law will exist prior to and independently of the complex legal framework that Hayek proposes. Therefore, "good" governors would be those who would govern according to the preexisting law. By introducing an explicit institutional system in order to regulate an order, Hayek not only argues for a superfluous complexity, but also contradicts the basic idea of the spontaneity of the order of "Great Society". Secondly, it seems that for Hayek "good" government implies more than just lawful government. It actually implies effective government. The large legal framework that Hayek proposes can thus be seen as an attempt to improve government's effectiveness. However, if that is the case it would seem that the problem has been shifted to a simple quantifiable comparison.

The delimitation of the state to the role of coordinator leaves many questions unanswered. The problem of ideology is one of them. Although Hayek does not treat ideology as a separate subject systematically, he seems to suggest that it has three main features. It is self-generated, it is traditionally adopted, and it is exclusively evaluated according to its ability to adapt and persist. Hayek has argued for the complete distinction between factual and normative statements and consequently he has defended the position that no moral or ideological principles can be deduced from facts. It has been argued that this position leads to an extreme subjectivism which can hardly be used as the basis for the foundation of ideology. It must also be stressed that Hayek somehow takes traditions to refer to groups or even nations. However, the subjectivism that emerges from the Hayekian distinction between factual events and

normative rules can only explain individual systems of moral values. By implication when Hayek implies group or national ideologies these categories can only figure as mystified forms of expression of his initial individualism. The adoption of ideologies through tradition, as proposed by Hayek, fails to resolve this question. Although it is based on the dubious presupposition that self-generated scales of values can become traditions, i.e. group ideologies, it still ascribes a transcendental dimension to ideology which can hardly be justified in a historical perspective. Finally the evaluation of an ideology according to its ability to adapt has been proved a very troublesome criterion in Hayek's theory. In fact, Hayek systematically abandons the "effectiveness" criterion whenever he argues for the superiority of his "Great Society". It has also been argued that this proposition, when taken consistently, will inevitably lead to the acceptance of any system just because it exists. N. Barry's comment on this is in the same vein: "But there does seem to be a difference between the acceptance of things because they can be explained in this way and the acceptance of them merely because they are there." (N. Barry 1979 p.65).

Consequently, Hayek's account of the problem of ideology is less than satisfactory. Nevertheless, ideology, at least in the sense of abstract ideals, plays a determinative role in Hayek's theory. It seems that his theory tends to isolate ideology both from *de facto* social reality and from the state, thus ascribing to it an indisputable character, indisputable not in the positivist sense that all ideologies are "metaphysics" but in an arbitrary and eclectic way. The result of this attitude is that the system of values of the "Great Society" is elevated into a superhuman sphere, beyond any criticism.

2. The Ambitions of the Welfare State

With these preliminary considerations taken into account, a closer examination of Hayek's critique of the welfare state can now be attempted. The welfare state is objectionable not because of its aims but because of the methods of government action it involves (F.A. Hayek 1960 p.258). Hayek believes that "there is undeniably a wide field for non-coercive activities of government and that there is a clear need for

financing them by taxation" (F.A. Hayek 1960 p.257 and chapter XV). There are common needs that can be satisfied only by collective action and which can be thus provided for without restricting individual liberty (F.A. Hayek 1960 p.257). He even argues that these "services" may gradually rise, as "we grow richer". Furthermore, he believes that a bottom, poverty line is a safeguard for the peace and good functioning of society.

What he criticizes is the "coercive" interference of the state in society and, above all, in the market. "The reason why many of the new welfare activities of government are a threat to freedom, then, is that, though they are presented as mere service activities, they really constitute an exercise of the coercive powers of government and rest on its claiming exclusive rights in certain fields" (F.A. Hayek 1960 p.258). We now have to find out which are these "activities" that are objectionable and why.

There are three main ambitions of the Welfare State according to Hayek[1]:

1. All kinds of public amenities (parks, museums etc.) which may be in the interest of all members of the community.
2. Security, i.e. "protection against risks common to all, where government can often either reduce these risks or assist people to provide against them".
3. Social justice, i.e. the state becomes "primarily a redistributor of income".

The first aim is positive - "though there are strong reasons why those services should be provided by local rather than national authorities". The second aim can only be justified partly, namely as long as it refers to actions taken for the protection of all at the same time. Hayek here points out a danger. There are two conceptions of security, he says, "a limited security which can be achieved for all and which is, therefore, no privilege, and absolute security, which in a free society cannot be achieved at all" (F.A. Hayek 1960 p.259). This second conception refers to "the assurance of a given standard of life, which is determined by comparing the standard enjoyed by a person or a group with that of others" (F.A. Hayek 1960 p.259). This second conception of security leads to inequality of treatment and is therefore counter to a free society. The third aim of the Welfare State is altogether objectionable. It

[1] F.A. Hayek 1960 ch.17.

leads to a state of affairs irreconcilable with a free society. Furthermore, "it is bound to lead back to socialism and its coercive and essentially arbitrary methods" (F.A. Hayek 1960 p.260).

It has been argued before that Hayek is not an anti-statist. This remark is not of any novelty since both Hayek and the majority of his critics point out the circumstance explicitly. What however is not so widely accepted is that Hayek actually harbors the idea of an extremely coercive state in any but the "market" area. It seems that the dominant opinion among scholars is that he is mainly arguing for a drastic delimitation of the state functions. This opinion is partly due to the polemical tone that Hayek employs against the welfare state. In most of his major works he seems to attack the excessive powers of bourgeois democracy. Another reason why Hayek is thought to argue for a limited state lies in his concept of coercion. He repeatedly accuses the welfare state of being coercive in contradiction to the "government" of his "Great Society". Nevertheless, there are many parts of the Hayekian theory of the state which indicate that such a conclusion might be superficial. In fact, the "Great Society" does not look any less state dominated than the society existing today. It is true that Hayek explicitly suggests a delimitation of the area in which the state should function. An important part of the state functioning is thought of as coercive and therefore condemnable. Of course, it is no accident that this part coincides with the social functioning of the state; and, besides Hayek does not hide his intentions in that respect. A less recognized fact, however, is that along with this delimitation Hayek's theory proposes a dynamic reinforcement at least of some of the remaining functions of the state. Thus, paradoxical as it may sound, coercive functioning is openly advocated and unreluctantly called upon, whenever the need arises - that is, whenever the "Great Society" is to be protected from all kinds of internal and external enemies. At the same time, a very important part of state functions are not delimited as such but simply dismissed on the grounds that they do not belong to the sphere of the state activities. This tactic was followed during the replacement of the term "state" by the more convenient term "government" and the subsequent personification of the latter. It has been followed again during the methodologically insufficient account of democracy and democratic government. Finally the trick of "delimiting" the state without essentially touching its authority and

power is completed by the introduction of a curious definition of coercion according to which most social or collective activities are considered as coercive while bargaining in the labor market between an unemployed worker and IT&T is considered as the essence of equality and freedom.

Hayek, consequently, is not anti-statist. He has never suggested that any society can function without a coercive state. Furthermore, he believes that the state should be strong enough to assure to its citizens a certain amount of security against any internal or external enemy[1]. Nevertheless, he is against the particular form of state that involves itself in the functioning of the "market". What he seems to suggest is that the state should keep on being a mechanism of social "order" and even reinforce its position as such but at the same time it should cease functioning as a mechanism of "social justice"[2].

3. Trade Unions and Coercion

In what fields then has the state become "coercive" by the unequal treatment of its citizens and its ambition to guarantee social justice? In *The Constitution of Liberty*, Hayek points out three main fields of welfare state "coercion", namely its policy concerning the labor unions, its policy on social security and its economic policy.

The way Hayek chooses to present the problems of Labor policy under the welfare state is quite peculiar. Instead of referring directly to the state's activities, he reverses the process by trying to prove that labor unions are "coercive" by definition under their present form. The overall conclusion is that under the welfare state, trade unions were given many arbitrary privileges that should be taken back if we wish to avoid chaos and live in a "free" society.

Hayek starts his argument by saying that trade unions, in their present form,

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[1] See also J. Gray 1986b pp.73-81.

[2] For the compatibility and, more importantly, the necessity of an authoritarian state in a "free" market society, see R. Nisbet 1986 p.58.

are mechanisms for the coercion of the individual worker and, furthermore, that their action is necessarily opposite to such an individual's interests in the long run. If we accept the above argument the question that inevitably arises is: how did the trade unions gain all the powers that they possess at present? The state (even the welfare state) certainly did not give the trade unions any power that they did not ask for and surely the workers themselves could not have demanded a reinforcement of the trade unions, since they are so profoundly coercive, unless we assume that the workers had somehow formed a false belief that it is through the unions that they could materialize their expectations. But is this not in contradiction with Hayek's fundamental (and vital for the validity of his individualist theory) belief that it is the individual and only the individual who can judge his own interests in the best way possible[1]?

An objection to the above interpretation could be raised here. Hayek accepts that some "tribal" sentiments still exist among people and the existence and support of the trade unions could be justified as an expression of these sentiments. The argument could then continue by maintaining that a strict legal framework must exist in order to prevent these sentiments from dominating society. Although this could be a perfectly valid objection under different conditions, it is doubtful whether it can stand examination in the context of the Hayekian theory. The problem appears as soon as one attempts a definition of "tribal" sentiments as distinct from those sentiments that characterize the "Great Society". Hayek only gives a rough idea of what is "tribal" and what is a product of a "Free Society"; he does not provide one with any clear criterion[2]. The question is: according to which criterion is one to

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[1] It is argued, for example, that for Hayek "The individual may not know everything nor will he fully understand his world but he is still the one most qualified to know himself and his own best interests" (P.W. Dyer and R. Harrison Hickman 1979 p.388). In theory it is of course conceivable that a particular individual can be liable of mistaken judgment. In practice, however, this possibility is of little importance, since even in these cases it is that same individual who will be the "most qualified to know his own best interests" and thus to understand his mistakes. Moreover, the decision to join and support the trade unions is not taken by some insignificant number of "individuals" but from the overwhelming majority of them. What is more, this decision seems to enjoy the support of the "individuals" concerned over a long period of time. In short, if the individual is taken as the "best judge" of his/her interests there is little room left for judgements from the "outside" that are turned against what this individual explicitly prefers.

[2] The obscurity of this point has troubled many neo-liberals. In that sense, S. Brittan asks: if Hayek is prepared to grant evolved institutions a superior wisdom why deny this hidden wisdom to more interventionist or authoritarian structures (S. Brittan 1980 p.34)?

judge? The answer can only be according to some abstract moral values that exist *a priori*. In short, this is only another form in which the inner contradiction between the "evolutionary scientific" and the morally imperative aspects of Hayek's theory appears.

His arguments on the coerciveness of trade unions are no less arbitrary. According to Hayek, the term "freedom of association" has now lost its meaning and should be replaced by "the freedom of the individual to join or not to join a union"(F.A. Hayek 1960 p.268). There is no further explanation given for this "change of terms". Hayek argues that "Trade Unions exercise coercion of fellow workers contrary to all principles of freedom under the law" (F.A. Hayek 1960 p.269). "The interest of those who will get employment at a higher wage will therefore always be opposed to the interest of those who, in consequence, will find employment only in the less highly paid jobs or who will not be employed at all" (F.A. Hayek 1960 p.270). "Their success [i.e. of Trade Unions] in raising real wages beyond that [i.e. beyond the point that the employers are willing to pay] point, if it is to be more than temporary, can benefit only a particular group at the expense of others" (F.A. Hayek 1960 p.270).

There is nothing new or unusual about this argument. It has been repeated ever since the trade unions were created. It is based on some real problems existing under, and specifically as a result of, capitalism which are presented as eternal and unavoidable problems of any society. Starting from the fact that under contemporary capitalism an increase of the wages of a certain sector of labor may lead to unemployment for a part of the working class, Hayek draws the arbitrary conclusion that trade unions' actions are always opposed to the interest of the workers as a whole. What Hayek deliberately avoids here is the fact that this may well be necessary under a system of wage-labor where the means of production are in the hands of a capitalist whose interest is to increase his profits as much as possible, whereas it need not be the case if everybody were to benefit from the profits of production; on the contrary, it would seem likely that this would not happen. Moreover, it could be argued that the fact that the increase of wages in a certain sector of labor may have negative results for the rest of the workers indicates either that trade unions are not strong enough to prevent such outcomes, or that they do not want to prevent them. The

latter case applies to the example of the trade unions in the U.S.A.[1] where all major trade unions have been totally corrupted by the employers and/or the state and have nothing to do with the real interest of the workers, and Great Britain where the trade unions have long ago ceased to represent the workers as a whole and are exclusively interested in the narrow wage demands of particular sectors or even of particular enterprises. The result of such a policy, which is due to a lack of strategic social goals, is that trade unions have failed to represent the working class even in its everyday demands. The former case applies to many other capitalist countries, such as France, Italy and Greece, where the trade unions have failed when they were not powerful enough to face the coercive mechanisms of capitalism, often expressed in an extremely violent way. Trade unions in these countries have most of the time managed to express the interests of the working class as a whole while at the same time ensure more favorable conditions of work in each sector. Thus, the first part of Hayek's attack on the trade unions is not concerned directly with their "coercive" character, but is directed against their ineffectiveness in guaranteeing better conditions for the workers.

The second argument is that they become the cause of economic failure. Although Hayek believes that "the spectacular legal privileges granted to the trade unions have since become the chief cause of the progressive decline of the British economy" (F.A. Hayek 1979 p.32), he suggests that "Our argument will not be directed against Labor Unions as such" (F.A. Hayek 1960 p.269). It only takes five pages for him to contradict himself by appearing in his true colors: "Far from being a public calamity, it would indeed be a highly desirable state of affairs if the workers should not feel it necessary to form unions" (F.A. Hayek 1960 p.274).

The fact, however, seems to be that the workers do not feel the same way about labor unions. Therefore, Unions must be deprived of their "coercive" power, even if this implies direct state oppression. "It is in fact more than probable that unions will fully develop their potential usefulness [i.e. usefulness of the capitalists but total uselessness for the workers] only after they have been diverted from their present antisocial aims by an effective prevention of their coercive powers" (F.A.

[1] An example that Hayek likes very much for obvious reasons.

Hayek 1960 p.276). Hayek does not hesitate to elaborate on what he means by "effective prevention". In the conclusion of his chapter on "Labor Unions and Employment", he uses an illuminating expression. Referring to labor unions he writes: "There is only one such principle that can preserve a free society: namely, the strict prevention of all coercion except in the enforcement of general abstract rules equally applicable to all" (F.A. Hayek 1960 p.284).

Thus, the requirement of equality in front of the law is the only argument that Hayek can raise in his case against the labor unions. He bases this proposition on the conclusions of his strictly formal and individualist social approach. His opinion is that individuals are units with no social dimension. Therefore, law should treat them equally. It is worth noticing that even this formalistic equality is seriously shaken in some parts of Hayek's theory. Thus, while the logical assumption would have been that since the trade unions should be deprived of privileges because they are "monopolistic" organizations preventing free competition, the same measures should have been taken at least against some monopolistic aggregations of capital (as being equally (!) monopolistic), Hayek does not hesitate to argue that it is the former that constitute a threat to the "Great Society"[1]. Thus, if for example, employers discriminate on grounds of color or sex then it is not the business of law to intervene. A free market can protect employment opportunities much better than can coercive laws[2]. The sexism and racism that has prevailed in Western societies for so long remains *terra incognita* for Hayekian neoliberalism.

The question that remains unanswered in Hayek's theory is how did individuals acquire the unequal places they hold in society? People live in societies and societies have states which "organize" them. It is only reasonable at least to wonder whether the structure of those societies and the function of those states played an active role in the creation of inequalities between individuals in the first place. While Hayek is

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[1] In that sense, "(...) in the *Constitution of Liberty*, and in other essays, he took the view that labor monopolies not only are the greater danger to the smooth functioning of the market order but also that the two cases [labor "monopolies" and capital monopolies] are not the same. It would appear that the monopoly power of unions is a product of discriminatory law granting unions special privileges, used mainly against the workers themselves, while that of employers, as well as being much exaggerated, does not pose the same threat to liberty." (N. Barry 1979 p.50).

[2] See N. Barry 1979 p.92.

so eager to point out all the "discriminations" that the welfare state entails, mainly against the wealthy and the powerful, he systematically omits to place the initial inequalities in a social context. These inequalities are created in a mystical way somewhere outside the existing social relations and are therefore irrelevant to the form of society and its political expression - the state. Thus, the model of spontaneous order in society appears to be illusory. It requires a belief in liberty and equality which fails to question the initial inequality of material life. It, thus, functions as a cover for the social "game" - that is, it obscures the fact that it is a struggle rather than a game. The appeal to an unobstructed functioning of the spontaneous social order, then, acquires the significance of an appeal to redefine the rules of the social "game" in terms of an inegalitarian social determinism. Liberty reappears in the form of its opposite: submission to the unknowable and unmasterable destiny (Y. Quiniou 1989 pp.80-81).

This point also contributes to the argument made previously on the supposed delimitation of the state. It is obvious that Hayek suggests a delimitation of the state if we agree in seeing it as an exogenous factor that stands over the existing social relations. But it becomes much less obvious, in fact it becomes doubtful, if we consider the state as a component part of society - that is, if we accept the view that it plays an active role in the creation and maintenance of existing social relations. In that case state interference has already occurred long before Hayek detects it and has played a determinative role in the formation of the initial social inequalities between individuals.

The neoliberal "radical" contention that "The basic point about exchange processes is that from them every participant benefits - or else why would he make trades?" (N. Barry 1987 p.33) seems to have been accurately criticized more than a century ago: "This sphere that we are deserting, within whose boundaries the sale and purchase of labor-power goes on, is in fact the very Eden of the innate rights of man. There alone rule Freedom, Equality, Property and Bentham. Freedom, because both buyer and seller of a commodity, say of labor-power, are constrained only by their own free will. They contact as free agents, and the agreement they come to, is but the form in which they give legal expression to their common will. Equality, because each enters into relation with the other, as with a simple owner of commodities, and

they exchange equivalent for equivalent. Property, because each disposes only of what is his own. And Bentham, because each looks to himself only, and no-one troubles himself about the rest, and just because they do so, do they all, in accordance with the pre-established harmony of things, or under the auspices of an all-shrewd providence, work together to their mutual advantage, for the common will and interest of all" (K. Marx 1954 vol.I p.172). What is important in this critique is that it singles out the core of the liberal argument, namely the formalistic and legalistic logic entailed by abstract individualism in all its versions.

However, in order to do justice even to 19th century liberals, a difference should be noticed here. Hayek's argument does not simply remain within the sphere of abstraction. The difference of neoliberalism lies in the aggressive way by which it presses home these abstractions in their practical application, thus revealing their illusory character. In that sense for neoliberalism "Even if the threat of starvation to me and perhaps to my family impels me to accept a distasteful job at a very low wage, even if I am at the mercy of the only man willing to employ me, I am not coerced by him or by anyone else" (F.A. Hayek 1960 p.137) and, therefore, I am free.

The inadequacy of Hayekian social and political theory is, thus, demonstrated in the way he approaches the problem of the trade unions. For Hayek the bargain between an individual worker and an all-powerful enterprise is a legitimate bargain between free and equal "units", while any collective bargain, or for that matter any trade union activity, is coercive. Even a sympathetic critic of Hayek is skeptical on this point: "Firstly, since Hayek concedes that there is a *range* of coercive activities, this in principle would allow an inclusion of more employer/employee relationships in the coercive category than appear there as odd exceptions, such as monopsony, in an otherwise open economy. Secondly, he is able to exclude certain candidates for coercion virtually by definition. Since coercion exists only when an individual is under the control and direction of another agent, the meaning of the concept does not turn upon the severity of the act of the coercion. This means that it is possible that the effects of, say, the action of an employer over an employee would not be coercive, even if they were particularly severe, since the employee could have technically gone elsewhere, while fairly mild directions from political officials would count as coercive orders." (N. Barry 1979 p.73). Consequently, it is one thing to delimit the term

"coercion" and quite another to delimit coercion itself.

Hayek suggests a drastic alteration in the functions of the labor unions. In the first place, he suggests that "so long as the powers that the unions have been allowed to acquire are regarded as unassailable, there is no way to correct the harm done by them but to give the state even greater arbitrary power of coercion" (F.A. Hayek 1960 p.283)[1]. Hayek's attack, consequently, does not simply aim at depriving the trade unions of their "legal privileges"; it also requires a drastic state interference of a coercive type. This is a sample both of Hayek's inconsistency and of his real intentions towards the Labor Movement. For example, he says that closed shop agreements are against free trade and therefore they should not be enforced at law. But that is a dubious argument. If Hayek maintains that workers are "free" to sell their labor-power in the labor market, why does he not consider employers equally "free"? A perfectly logical argument would be that the employer is free to choose non closed shop agreements if he wants to. And again if he chooses voluntarily a closed shop he might suffer severe loses but this would only be an outcome of impersonal market forces and therefore there is neither coercion involved nor anybody to be blamed. At any rate, it certainly is not the "government's" job to ban those agreements; this is at least as arbitrary as to enforce them. Another argument could be that joining a trade union in order to get a job is *mutatis mutandis* the same as any condition that an employer might impose and therefore no more coercive. Hayek approaches the question of coercion eclectically so that it is no surprise that he discovers it only in the activities of the organized Labor Movement. But, it would seem, his argument on coercion mainly depends "on whose ox is being gored" (J. Viner 1961 p.231).

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[1] There seems to be a unanimous agreement in the neoliberal camp on that matter. see K. I. Vaugn in The Institute of Economic Affairs 1984. Also, M. Olson 1982; Olson's argument seems to be in favor of a drastic solution to the labor unions problem as the only solution for the "purification" of democracy and the achievement of economic freedom. F. Machlup adopts a more moderate position than Hayek. Instead of arguing that there are no other freedoms than economic freedom, he says: "we may regard some freedoms as absolute or ultimate values, others only as instrumental or intermediate values" (F. Machlup in E. Streissler 1969 p.129). Leaving aside the apparent difficulty (if not impossibility) of shaping an adequate criterion for the classification of freedoms, Machlup regards free economic choice and activity as freedom of the first kind and he argues that "Mere freedom of coalition could not have created all the strong monopolies of our days; active government interventions and *failure to suppress* private coercive activities have helped in this process" (F. Machlup in E. Streissler 1969 p.139; stress added).

The most crucial implication of the argument is that Hayek suggests open state interference and coercion where confrontation of the trade unions is concerned. This interference will acquire the form of legislation in the first place, but direct suppression is by no means excluded. The problem here is that once Hayek embarks on the logic of "more coercion to get rid of coercion" there is no way back to the spontaneous order theory[1]. Hayek openly states that a defence of the values of the "Great Society" by interference and coercion is legitimate. This might be his opinion but it is also a legitimation of the efforts of the "socialists" or the "collectivists" or anybody in general who seek to defend their values in the same way. It seems, therefore, that in the process of his attack on the Labor Movement Hayek has to admit a very important fact. When one reaches a state of direct social confrontation it is not the abstract ultimate values that compete in a peaceful eliminatory process; what counts is who has the state power.

This point is critical for the Hayekian theory for it constitutes a direct appeal for state oppression against the working class in he name of individual freedom. It also indicates that his whole theory is based on a strong, coercive and authoritarian state the existence of which is justified through its dynamic opposition to the organized Labor Movement. "Today (...) all the picketing in numbers should be prohibited, since it is not only the chief and regular cause of violence but even in its most peaceful forms is a means of coercion" (F.A. Hayek 1960 p.278). "Next the Unions should not be permitted to keep non-members out of any employment"[2]. Then, there are the "chief objects of strikes and boycotts" (F.A. Hayek 1960 p.278) that should be set aside. *Apropos* of the right to strike, it is worth quoting Hayek's full argument. "It should be said, however, that the latter - the right to strike - though a normal [?] right, can hardly be regarded as an unalienable right. There are good reasons why in certain employments it should be part of the terms of employment that the worker should renounce this right; i.e. such employments should involve long-term obligations on the part of the workers, and any concerted attempts to break such

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[1] In that sense N. Barry even argues that the conditions of a spontaneous order may be deliberately created or designed and, what is more, they can also be enforced. (N. Barry 1979 p.105).

[2] Of course, these "non-members" could be all sorts of strike breakers.

contracts should be illegal" (F.A. Hayek 1960 p.269). But this is not enough, because labor unions even under such a scheme might still create trouble for the "Great Society". Thus, "Finally, the responsibility for organized and concerted action in conflict with contractual obligations or the general law must be firmly placed on those in whose hands the decision lies, irrespective of the particular form of organized action adopted" (F.A. Hayek 1960 p.278).

It is obvious that under such conditions labor unions will never be able to demand anything. Besides, it would seem that for Hayek there is no reason or even moral right for a worker to make demands on his employers. "There can be no doubt that most of those who have built up great fortunes in the form of new industrial plants and the like have thereby benefitted people through creating opportunities for more rewarding employment (...). The suggestion that in these cases those to whom in fact the workers are most indebted do wrong rather than greatly benefit them is an absurdity" (F.A. Hayek 1976 p.98)[1]. Thus, labor unions should be transformed in peaceful halls of debate. The aim would be the reconciliation of all contradictions between the employer and the employees. One should notice however that there is no argument aiming to persuade the reader that the interests of the capitalist and the worker are in fact reconcilable. In other words, Hayek disputes any evidence of contradictions of interest between capital and labor by presenting them as contradictions within the working class.

Finally, there is one more role that labor unions could play in their Hayekian form - namely that of charity. "The oldest and most beneficial activity of the Unions, in which as "friendly societies" they undertake to assist members in providing against the peculiar risks to their trade" (F.A. Hayek 1960 p.277)[2]. This last activity is beneficial to Hayek's "Great Society" in two ways. First, it transforms labor unions from organizations of class struggle into peaceful charities and, second, it relieves

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[1] The claim that workers are deeply indebted both morally and in terms of their "always improving" living standards not only to capitalism as a system but also to the capitalists in particular, is frequent in the Hayekian texts. Reference can be made especially to Hayek's contribution in F.A. Hayek 1954 where he fights against the "absurdity" of the historians - taken almost *en masse* - who have second thoughts about the beneficiary nature of capitalism in its historical development.

[2] The notion of charity as a basic aspect of contemporary society is central to this trend of thought. See also R. Nisbet 1986 p.61.

capitalists and the state of all pressure to provide any material insurance against those "peculiar risks".

Summing up this important chapter, we can say that Hayek aims at an essential elimination of the powers of labor unions. His attack is developed in three stages; a) theoretical. He is aware that the power of labor unions lies in the solidarity of the workers and their organized action. His theoretical attack, therefore, aims at proving that there is no objective ground for solidarity among the workers because their interests are necessarily contradictory and organized action means coercion of the "free" personality of individuals. b) The creation of a legal framework which will exclude any organized action of the workers in the future. c) Direct suppression by the state of all labor unions that resist undertaking the reduced role that he suggests.

All the above suggestions are made in the name of "individual liberty" and a "free society". What is interesting here is that Hayek does not hesitate to use both direct state suppression, which, of course, requires a very strong and well organized state and, preventative legal measures which require a legislative body almost totally independent of public control. It makes little difference that all these measures are supposed to be necessary for the prevention of a greater evil and the protection of "liberty". After all, a great number of reactionary political ideas have been supported by the assurance that, unless they are adopted, some greater evil is bound to take place.

One more point can be raised in this context - namely the antisocialist essence of Hayek's thought. Antisocialism is a central element, common to both liberal and conservative political thought[1]. In the case of Hayek, it is used for two purposes. First, to attack directly non-capitalist societies and, secondly, to use socialism as a threat to all "free societies" in order to justify almost any social measure that he suggests. Antisocialism is not a new phenomenon within Western societies. It has existed ever since socialism was born. After World War II and the reinforcement of

[1] See, for example, N. Barry 1987 pp.86-87 and p.190, where antisocialism is regarded as the self-evident common denominator of both liberalism and conservatism.

the position of the Soviet Union, however, hostility towards socialism[1] became one of the most important tasks of any advocate of the ideals of the "Free World". In that sense, Hayek's theory supplies no particular novelty here.

4. Hayek on the Problem of Social Justice

"Governmental" actions aiming towards social justice constitute the second element we shall examine in Hayek's critique of the welfare state. It must be stressed that the content of "social justice" is doomed to remain unclear in Hayek's theory, "despite the many pages that Hayek devotes to the discussion of these concepts." (G. Walker 1986 p.46). His central idea is developed in two "steps". Firstly, the concept of social justice has no meaning within an economic order based on a free market. Secondly, social justice is irreconcilable with market order and individual freedom. It seems that the first part of this idea appears as a conclusion from his epistemological premises as developed on the plane of social theory. Hayek construes society as a mere sum of individuals. An aim, therefore, in order to be social, has to serve the individual interests of particular members of the society. "But social justice as used today is not "social" in the sense of "social norms", i.e. something which has developed as a practice of individual action in the course of social evolution, not a product of society or of social process..." (F.A. Hayek 1976 p.78). Since the interests of every individual cannot be known to anyone we will have to accept that no particular action can aim at a "social" goal. This agnostic approach serves as the basis for an attack on social values[2].

The other component of his critique is the concept of justice. We have already seen his purely, formalistic ideas on this. His argument here is only an extension of

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[1] In this view much depends upon the content of "socialism". Hayek, for example, believes that the period that followed World War II was stigmatized by the conscious or unconscious decision of everybody to become socialist. This period, however, coincides with the "coldest" (warmest?) part of the "Cold War" during which being a socialist was a synonym of being a public enemy.

[2] However, "(...) it is not enough for Hayek to say that the people cannot agree upon ends. This may be true but it is also worth pointing out that Hayek's proposition that people can agree upon means is itself an empirical one which may be true or false." (N. Barry 1979 p.140).

his previous thoughts. It is meaningless to characterize the outcomes of a market order as just or unjust because justice is an attribute of human conduct, while the outcomes are results of an impersonal and unforeseeable function.

Hayek's second conclusion - namely, that social justice is contradictory to a "free market" order - gives him the opportunity to argue that a "free market" order should try to eliminate any remaining elements of social justice[1]. The problem here seems to be the characterization of social justice as "meaningless"[2]. This characterization presupposes a notion of "pure" capitalism which seems to distance itself from reality quite dramatically. It is impossible to imagine a capitalist system without contradictions, the most determinative among them being the conflict between capital and labor. These contradictions must necessarily find their expression in the political superstructure in the form of workers' demands and state "concessions". The level of the development of such demands can only indicate the level of the development of the class struggle and the relative positions of the social classes within the given socio-economic formation. In that sense, "social justice" depends on the relative power of the capitalist to coerce the workers without any opposition and on the relative power of the workers to materialize their demands despite the capitalists' opposition. In neither of these cases can we have "pure" results. Capitalists can never eliminate "social justice" totally in practice because it is essential, for the very functioning of the system, that a minimum level of social well-being should be provided to everybody. The guaranteeing of such a level is entrusted to the state which, far from acting as a distributor of justice, has actually functioned as a "collective capitalist" in the sense that its primary task is the overall safeguarding of the capitalist relations of production - hence, of the interests of the capitalist class as a whole rather than that of individual capitalists. A good many contemporary bourgeois philosophers understand the necessity for a minimum of welfare state, and

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[1] Thus, "Every form of social justice (...) tends towards confiscation, and confiscation when practiced on a large scale, undermines social standards (...)" (I. Babbitt as quoted in R. Nisbet 1986 p.67).

[2] See also N. Barry 1979 (pp.137-143), where he argues that Hayek's objections turn upon the consequences of the implementation of schemes of social justice rather than upon its meaningless essence.

indeed Hayek himself argues for a minimum of social provision[1].

A "bargaining"[2] method is particularly prominent among neoliberals[3], most of whom use the same concept in different ways in the course of its theoretical exposition and practical application. Hayek, for example, argues that social justice is meaningless and does not hesitate to attack the concept in the most ruthless way. But when the same concept appears in its applied form he is obliged to defend a necessary minimum of its existence at the expense of consistency[4]. Hayek, then, does not seem to question the need for a minimum of social welfare in the "Great Society". Moreover, he does not question the view that the state is the only institution able effectively to provide it. But the justification of social "welfare" is based on a concern for the maintenance of order in society. It is obvious however that such a foundation can lead to a considerable increase of state intervention. At any particular time new "welfare" measures can be adopted in view of the possibility of major social unrest. But, Hayek would argue, if the state interferes any more drastically in the "market" then society ceases to be "Great" and thus its preservation is no longer desirable[5]. In cases of (actual or potential) social unrest the state should interfere not as a redistributor but by directly suppressing such unrest. This point becomes evident in the case of the dynamic crushing of the Labor Movement (traditionally a major source of "social unrest") which Hayek proposes. It seems thus that for all its theoretical foundation (or, more accurately, for all the undermining of its theoretical foundation) social justice in Hayek's theory is still defined in the well known "stick

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[1] That the concept of spontaneous order does not necessarily entail the exclusion of social justice, can also be derived from the views of one of its most prominent defenders, M. Polanyi. Polanyi, far from excluding social justice from a spontaneous social order, argues that he is "convinced (...) that a system of capitalistic enterprise can be made [!] to conform in this respect to any standard of social justice on which society is sufficiently agreed." (M. Polanyi 1951 p.144).

[2] In Hayek's case the "bargain" is between social provisions in return for social stability

[3] That Hayek actually promotes the idea of "bargaining" in the political process is also argued in R.F. Drinan 1980 p.624, although "bargaining" is used in a more restricted way. It must be noticed that, in Hayek's own opinion, his arguments are meant to be against any notion of "bargaining democracy".

[4] See B. Manin 1983 p.63n.

[5] Notice the ambiguity of the concept of "more interference" as well as the abandonment of order as such, as the reason of existence of the state.

and carrot" way, although the stress has definitely been moved further towards the "stick"[1].

The fact that Hayek bases his argument on the concept that a minimum of social provision is essential because it provides a considerable amount of stability to the overall order, is, in this sense, quite revealing. Thus, Hayek's line of argument contributes to the destruction of the time-honored liberal rights of the abstract individual and their replacement by the more realistic admission that the only reason for granting some social provision is the preservation of the smooth functioning of capitalist reproduction[2]. A quite reasonable conclusion at this point is to assume that in the "Great Society" (and in any such "ideal" scheme) the less the people will be in a position to endanger the "order", the less they will get...[3]. At times, the cynicism of Hayekian theory contributes to a better understanding of certain social and political phenomena.

Hayek's account of social justice is not altogether false. His argument that justice is a product of human understanding is correct up to a point. To this extent his attack upon transcendental and mystical concepts of justice (divine justice for example) or on justice based on abstract humanitarian grounds and natural rights traditions is justifiable. But when Hayek argues that justice is a human attribute he commits a double mistake. Firstly, by human he means strictly individual. This is obviously a result of his methodological individualism and his consequent subjectivism and to that extent it is a consistent conclusion. The problem is that social justice (as with ideology in general) appears to be an attribute of whole classes of society and therefore Hayek has to make an illegitimate deduction from his subjectivist premises to a general ideology. What Hayek is unable to explain adequately from his individualist starting point is the problem of the formation of ideologies, an expression of which is the concept of social justice. Secondly, Hayek claims that social justice is a human attribute because he seeks to contrast it with the "superhuman" outcomes

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[1] Brittan relates this point to Hayek's conservatism quite accurately. (S. Brittan 1980 p.39).

[2] The neo-liberal case is also argued for, with the same implications, in J. Gray 1986b p.80.

[3] Notice that in this sense Hayek's argument actually points towards the necessity for organized collective activity rather than against it.

of his market order. This is a totally false contradiction: the outcomes of a free market society appear spontaneous and superhuman because Hayek is not willing to consider their constitution within the sphere of production. In this sense, social justice (as with in fact most other moral values) can be justified on exactly the same grounds as the "impersonal" outcomes of the free market order. After all, it is in a free market order that social justice emerged as a moral value and therefore it can easily be claimed that it is only the "ideological" expression of the factual relation that takes place in that order[1]. Hayek could, of course, argue that social justice did not emerge in a free market order but simply preexisted in "tribal" societies and survived as a "sentiment" in the "Great Society". But such a claim is simply wrong, at least in a historical perspective, since social justice as a widely accepted concept emerged relatively recently in history - that is, long after capitalism was established as the dominant mode of production. One must also notice here, that Hayek suggests that social justice is a meaningless concept because it is a man-made moral value. Although this statement might be valid in a positivist theory, it creates problems of inconsistency when placed in Hayek's own theory. After all, Hayek does not hesitate to claim moral superiority for his "Great Society" - a claim that he obviously does not consider as meaningless[2].

Hayek bases his first argument on two further, abstractly logical, points. First, although we can see injustice all around us we cannot say who is to be blamed for it. "It is certainly tragic to see a failure of the most meritorious efforts (...) of young men to build a career (...). And we will protest against such a fate although we do not know anyone who is to be blamed for it, or any way in which such disappointments can be prevented." (F.A. Hayek 1976 p.69). Second, in a system where each is allowed to choose his occupation nobody can have the power to see that the results correspond to their wishes. This thought is based on his previous argument concerning the identity of the outcomes of natural and social laws. In that sense, it can be maintained that the meaninglessness of social justice derives directly from the particular status of the rule of law. It is only because the overall shape of the social

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[1] See also G. Walker 1986 p.24 and pp.95-99.

[2] See *infra* for the whole argument.

order is determined by the rule of law, that social justice can have no place in political theory. For, the rule of law in its abstractness and impartiality acquires the status of natural law. Hence, it is meaningless to interpret it according to judgements of merit, just as it is meaningless to attribute any notion of justice to physical laws.

With this, Hayek's abstract naturalism enters the field of applied politics[1]. So far, the equation of social and natural laws, albeit not always explicit, only took place in the realm of theory. This resulted in a mystification of social laws and their consequent elevation into ahistorical entities. This process was mainly limited to a justification of the existing social structures. Thus, the equation resulted in an attempt to guarantee what already exists. With the exclusion of social justice from political theory, Hayek's naturalism undertakes a further task, that of the correction of what exists. Naturalism is not just the justification of what exists as natural; "natural" itself now seems to be what is in accordance with the "Great Society" regardless of whether what is natural exists or not[2]. By implication many existing practices and institutions are deemed to be contrary to nature. In terms of methodology, then, Hayek proves himself inconsistent once more. It is neither "scientific" evolutionism nor abstract normativism that prevails in his theory. It is simply an unconditional desire to establish the inevitability of his blueprint[3]. Thus, "nature" has turned out to be only a synonym of the "Great Society". In terms of politics, what characterizes his theory is maintenance of the *status quo*: the foundations of the "Great Society" are the foundations of capitalism[4]. And their preservation, which must be achieved at all costs (ranging from theoretical inconsistency to the promotion of authoritarianism), can only be achieved after the "purification" of the social order of unhealthy practices such

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[1] There seems to be a close similarity between the role that the rule of law undertakes under its naturalistic form in Hayek's political theory and that of a secularized religion as it appears in R. Nisbet 1986 pp.72-73.

[2] Kukathas comments in a similar way that in Hayek's theory laws are just "if they conform to or uphold the rule of law". (C. Kukathas 1989 p.155).

[3] The same point is made from a different perspective by G. Walker. "The paradox of his attitude is perhaps unavoidable, reflecting the tension that the issue of ethics creates between Hayek's philosophical commitments and his political aims." (G. Walker 1986 p.97).

[4] In fact, Hayek does not deny this. In many of his major works capitalism emerges as a synonym for his "Great Society". This point comes out more clearly in his latest works - for example, in his contribution in A.J. Anderson 1986 and above all in F.A. Hayek 1988.

as majority rule, democracy and social justice. Hayek's cynicism once more appears as illuminating so far as the future development of capitalism is concerned.

Hayek's naturalism has been the focus of many critiques. Liberals and Libertarians tend to concentrate their attacks on the inadequacy of the argument itself. Thus, for example, it is said that social laws are not the same as natural laws because the former can be altered (even if not directly or immediately) while the latter cannot[1]. Furthermore, it is possible to violate a social law but not a natural one[2]. Besides, had this equation been valid, there would hardly be any possibility for a stable social order, since one would choose to avoid a social law just as one chooses to avoid a natural calamity[3]. It has even been argued, not without justification, that naturalism penetrates Hayek's theory in all its aspects. From the mechanistic account of human mind in *The Sensory Order* up to the formation of spontaneous social orders and through the common denominator of spontaneous orders[4] naturalism emerges as one of the cardinal points in Hayek's thought.

More importantly, it is the role that naturalism undertakes in Hayek's theory that renders it particularly objectionable. The sovereignty of nature in politics becomes the successor of the sovereignty of people. It is the logical, formal frame in which politics has to develop. It thus guarantees the objectification of the existing social relations and stratification[5]. Hayek, however, differs greatly form the traditional conservative who would simply argue on the lines of a stable social order based on, say, a natural aristocratic meritocracy. His naturalism is negative rather than positive. That is, instead of ascribing social positions according to fixed characteristics of human beings, it ascribes them on the basis of the absence of a historically determined human individuality. This, in turn, leads into his

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[1] See W.P. Baumgarth 1978, R. Aron 1961.

[2] See R. Aron 1961, R. Hamowy 1978.

[3] See W.P. Baumgarth 1978.

[4] For an account of the role of spontaneous orders in Hayek's thought, see J. V. Cody 1982 pp.3-4.

[5] Hayek's approach is so distrustful to reason that "it instructs us to submit blindly to a flow of events over which we can have little control" (N. Barry 1982 p.52). On Hayek's naturalistic "fatalism", see also F.R. Cristi 1984.

methodological individualism. Hayek refers to an abstract individual[1] which becomes in its abstraction nature itself. It is this atomistic reality, which is internally conditioned by externality, which makes the most subjectivist individuality the product of the most objective social reality. Consequently, naturalism emerges as the central concept of social life too. Social life is an interrelation - abstract in itself - of abstract individuals[2].

Thus, Hayek's naturalism is opposed to social Darwinism in the latter's typical conservative version (F.A. Hayek 1988 pp.11-28). It is, rather, a liberal-oriented naturalism - "open" and dynamic - in which no particular place corresponds to particular individuals[3]. It thus fulfills capitalism's need for constant mobility. It is not the subservience of somebody in particular to somebody else that Hayek considers as natural but subservience in the abstract, that is, subservience as such, subservience of "anyone" to "anyone"[4].

5. Amorality of the Free Market?

Hayek argues that nobody is to be blamed for the unpleasant outcomes of the "Great Society". But this might only be true when by "nobody" one means no particular person (there are many cases where even this highly limited and abstract presupposition is difficult to defend). Hayek's argument then refutes the advocate of social justice who might claim that for each individual case of failure there exists a certain individual (other than the one who failed) who should be blamed personally.

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[1] "Someone" or "anyone"; for example, he defines the "Great Society" as the society in which "someone" would wish to place his/her children.

[2] Hence, its conception as a "game"; see Y. Quiniou 1989.

[3] It is precisely this point that those who accuse Hayek of direct social Darwinism overlook. See, for example, G. Walker 1986 p.29 and J. Viner 1961 p.235. The differentiation proposed here seems quite close to the distinction Kukathas draws between "abstract" and "substantive" conservatism (C. Kukathas 1989 p.182).

[4] Another defender of spontaneous orders captures the point clearly when stating that spontaneous orders should *condition* the actions of subordinates (sic!) rather than determine them (M. Polanyi 195 1 p.115).

But it is doubtful if this answer meets all conceptions of social justice. For example, a widespread opinion is that social injustice is not perpetrated by certain persons but by the actual structure of capitalism, i.e. by the fact that capitalism is based on human exploitation[1]. Hayek's argument simply does not meet this point at all. It is one of the most frequently applied tactics of the Hayekian reasoning to leave the general framework in which actual human relations take place completely out of consideration. The form of Hayek's comparison verifies this opinion. He chooses to compare the outcomes of a relation that takes place in a society, structured in a particular way, with that of a relation that takes place in nature. The reasonable conclusion is that a society structured in a particular way and nature are two orders equally unalterable by human action. Thus, the comparison serves as beneficial for Hayekian theory in two ways: on the one hand it presents a particular society, i.e. capitalism, as unalterable and as "given" to man as is nature. From here it is quite easy to assume the eternal existence of capitalism. On the other hand, it makes the "unfortunate" outcomes of that order appear somewhat harmless since it is in vain that one might complain about something so unalterable as the laws of nature. What Hayek's arguments show, actually, is that it is impossible to criticize or even to create a rough idea of the social relations that exist in a certain society if one does not take into account the framework in which they subsist, i.e., the way in which such a society exists; and that is precisely what Hayek systematically avoids. So, while in the case of a natural calamity we can only take every precaution possible and hope that science will soon provide us with an effective answer in the case of a "social tragedy", we can react effectively to social calamities by changing such laws as have proved to be unsuitable. In the first case, there is nobody we can protest against, since natural laws are objectively given to mankind. In the second, we can certainly protest against those who created a particular form of society and its laws and against those who defend it. What Hayek maintains is that in a social failure people will be frustrated because of an "objective" function of a certain type of social organization - namely capitalism; he is trying to identify nature with society at a particular stage of the latter's development

[1] For a liberal objection to Hayek's argument, see C. Kukathas 1989 p.129, where it is argued that Hayek's account cannot meet concepts of social justice based on entitlement or rights.

(nature=capitalism). However, although social relations are objective in each historical period, they remain objective only for that period and therefore they can certainly be altered by deliberate human action. The tragic failure of young men to build their careers is a necessary outcome of capitalism because in capitalism there will always be a few able to materialize their dreams and a lot who will have to watch their dreams dying and settle for inferior positions.

There is also another aspect of Hayek's theory that emerges from this conception. It seems that the ideal "Great Society" will have to sacrifice a part of its members on the altar of spontaneous order[1]. Whether this sacrifice is the price paid for an unobstructed social evolution or whether it is just an unfortunate outcome of the "Great Society", that Hayek does not explain[2]. But whichever is the case Hayek appears positive that the price must be paid. The obvious question then is why do societies have to suffer such losses? If Hayek was an evolutionist he could have argued that, since the ultimate value of his system is social evolution, no price is too high in order to achieve it. But this is hardly his case. By invoking an idealist abstract moral value as the ultimate value of his system, Hayek seems to be trapped in his own eclecticism: what could he answer to the legitimate case where somebody might prefer a safe life for everybody instead of a "free" life for some?

Hayek's second thought is based on a logical presupposition - namely that in a free market society each is allowed to choose his occupation - and an arbitrary assumption - to the effect that nobody can have the power to foresee the results corresponding to his wishes. The presupposition becomes obviously wrong if we accept the arguments presented above. In a system based on the principles of capitalism it is possible to allow each individual to choose what he would like to become but quite impossible to have each becoming what he has chosen. In fact, this irreconcilable coexistence of "freedom" and coercion is one of the main characteristics of this particular mode of production. Capitalism, in contrast to former socio-economic formations, bases its existence primarily not on direct, open oppression but

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[1] In fact, the continuous and systematic failure of expectations is taken as a crucial condition for the successful operation of the "free" market society (F.A. Hayek 1978 p.185).

[2] See also G. Walker 1986 pp.58-59 and n.78, where he points out the confusion of Hayek's ideas on that question.

on the covert coercion that emerges through its relations of production. In a sense coercion, although concealed becomes thus a component part of capitalism rather than a necessary supplement. Thus, as far as the "unforeseeable" results of a "free" market order are concerned, we can say that, contrary to Hayek's claims, we can predict who is to become what in such a society without much difficulty. But what is more important is that we can be sure, regardless of particular personal outcomes, that the overall shape of that "order" will be structured according to a strict hierarchy based on the exploitation of man by man[1]. And this outcome, which is both certain and fundamentally important, is what Hayek omits to take into account when he argues for the "unpredictability" of the outcomes of his spontaneous order[2]. Social or distributive justice, in this sense, is only a mechanism that tries to diminish these certain results. It can never become a full and complete justice because it only appears as a cure for the effects and not for the causes of the problem to which it is addressed.

There is still another aspect of the way Hayek approaches the problem of social or distributive justice. He takes it for granted that social justice is a concession to the people, a present given by the "government" as a result of a philosophical conception of justice. In his "Great Society" this task is left to the benevolent individual (usually identified as a capitalist). This scheme has the additional merit of providing "an intellectual adherence to the free market and the emotional attachment to authority and imposed tradition". Thus, "to talk of the new class as the donor not just of welfare payments but of "permission" - indeed to attest that a state that cannot of course be "compassionate" can nonetheless be "permissive" or otherwise - is to speak the language of parenthood" (D. Edgar in R. Levitas 1986 p.74).

Hayek argues that social justice is closely related to egalitarian considerations. He believes that social justice is based on a specious analogy with the situation in which some human agency has to distribute rewards, in which case, indeed, justice would require that these rewards be determined in accordance with some recognizable

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[1] See for example, R. Nisbet's views on the structure of society (1986 pp.34-54).

[2] In that sense, R. Vernon argues that although a particular incident (say, the price of a product at a given moment) may be unintended "the *orderliness* is not at all an incidental outcome of individual's behavior" (R. Vernon 1979 p.66).

rule of general applicability. However, in a "free" society any attempt to introduce a redistributive system in regard to people who differ greatly in strength, intelligence, skill, knowledge and perseverance as well as in their physical and social environment means that "government" would have to treat them very differently in order to compensate for those disadvantages and deficiencies it could not directly alter.

Hayek seems to believe that the relative position of each individual in respect of the relations of production and the resulting social structure is irrelevant to their abilities, knowledge etc.. He also believes that these relations of production are in their turn totally independent from their corresponding political organization at the level of the state[1]. Finally, he attributes to abilities, skills, etc. a transcendental substance, thus reducing them to objective "goods" defined independently of any particular pattern of social relations[2]. For Hayek, then, talents and values are abstract categories with no historical or social connotations[3].

A further point should be stressed here. Hayek bases his attack against social justice on his general antiegalitarian concept of human beings. Thus, he criticizes all versions of natural equality which are based on natural rights theories before he concludes that "as a statement of fact, it just is not true that "all men are born equal"" (F.A. Hayek 1960 p.87). The methodological basis of this argument is Hayek's belief that there is a boundless variety in human nature. Hayek's rejection of the natural rights tradition is undeniable. What is less certain, however, is the legitimacy of the methodological basis he uses. Far from constituting an explicit argument, his objection to the premise of natural rights theories, that men are equal because they are created that way, seems to be simply that men are not equal for the same reason, i.e. because they are not created the same. His defence of human inequality, then, merely reverses natural rights theories without challenging their logic. The argument that men

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[1] A similar point is made by N. Barry 1982 p.51.

[2] For a clear albeit cynical equation of physical advantages with social ones, see R. Nisbet 1986 p.52. What is interesting is that in his argument Nisbet refers to Hayek's ideas as his own guidelines.

[3] For the same point see, Y. Quiniou 1989. Gray offers a view similar to Hayek's. "(...) although in a system of full liberal ownership the individual is unavoidably constrained by the limitations of his own *talents* and *resources*, he is not constrained by the values or opinions which prevail among his neighbors (...)." (J. Gray 1986b p.65 emphasis added). Notice the equal status attributed to "talents" and "resources" as well as their complete isolation from any social parametre.

are not equal because they have a wide range of differences in individual capacities and potentialities can be met by a counter-argument to the effect that although this is true the less powerful can still take the life of the strongest, or, that regardless their differences they still are equal creatures of god. The problem with Hayek's attack on natural rights theories is that he uses the same theoretical premises, albeit in the opposite direction, in order to criticize it. It is also worth noticing the explicit way in which Hayek attacks these theories right in the parts which have become annoying to the bourgeois regime. The shift against the natural equality of men which began during the early part of the 19th century is developed in its Hayekian version into a ruthless polemic; natural equality has become a synonym for social decay and even for socialism. It thus appears that with his account of inequality Hayek completes his naturalist argument. Inequality is reduced to, and thought of exclusively as, physical difference between men. It is this natural inequality however, that penetrates all social relations. Natural inequality, then, is at the same time both the cause and the effect of the rule of law. It is the effect in so far as the rule of law must treat unequals as if they were equals in order to preserve their inequality. And it is the cause in so far as its "natural" character provides the necessary basis of the equally "natural" character of the rule of law.

Apart from the theoretical aspects of the critique of equality, there are also some political implications. From the presupposition that human beings have many differences in their capacities Hayek concludes that "the desire of making people more alike in their condition cannot be accepted in a free society as a justification for further and discriminatory coercion" (F.A. Hayek 1960 p.87). In this way Hayek makes a simple caricature of equality and then "proves" it to be incompatible with freedom. But equality is not uniformity. Hayek's argument is answered by pointing out that equality is *not* the "desire of making people more alike in their condition" (especially not when by "condition" is implied their physical condition)[1].

But the most dangerous result of social or redistributive justice based on

[1] The tendency to identify equality with physical uniformity seems to be a common feature among antiegalitarians. Milton Friedman (1962 chapter 10) and Milton and Rose Friedman (1980 chapter 5), are some among the many who adopt it. Robert Nozick (1974 especially in part II), can also be included in those who attack equality on an abstract humanitarian basis.

egalitarian grounds is, according to Hayek, that it authorizes "government" to undertake an active role in telling people what to do. In such cases the rewards of individuals will not correspond to the value which their services have for their fellow citizens, but to the moral merit or desert the individual is deemed to have earned; and this will lead to a totalitarian government. This argument starts from the point that in a "free" society the services of any man are paid for according to their value for the citizens. This, however, would seem to imply that the value of the services of a garbage collector or a professor is much less for his fellow citizens than the value of the services of a car dealer or a football player because the former are paid considerably less than the latter[1]. It is also based, and this is the most important consideration, on the false bourgeois conception that in a capitalist economy all profit is made in the sphere of exchange and is hence a result of particular individuals' life-chances. Thus, it ignores the very basis of economy - namely the sphere of production where concepts like the satisfaction of the mutual interests of capitalists and workers are obviously naive.

Hayek's attack on the notion of social justice is characterized as exceptionally strong, comparable only to that of Nietzsche's (Quiniou 1989 pp.82,86). Its profound implications for the moral content of his theory are of capital interest especially if one considers that Hayek himself relies heavily on the moral superiority of his ideal society. Social justice is meaningless, for Hayek, because there is no way in which the human mind can determine any common aims in human action. Thus, it must be delimited in the determination of the formal conditions of action. By implication, reason cannot determine a just (re)distribution of wealth; hence, distributive justice becomes an epistemological impossibility[2]. At the same time, the terms "just" and "unjust" cannot be attributed meaningfully to an impersonal social order for which nobody is responsible. Social justice is just a mistake initiated by anthropomorphic construal of impersonal social order. It is thus an ontological impossibility as well[3].

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[1] See however the different view taken on this point by M. Polanyi 1951, notably in the paragraph entitled "Financing of Intellectual Activities".

[2] For a different approach, see T.R. Machan 1982 p.334.

[3] Notice the conservation of the contradiction that permeates the whole of the Hayekian methodology: social justice is at the same time both impossible and undesirable.

Hayek's reasoning, then, drastically denies the possibility of attributing to social justice and morality in general an essential social content[1]. It also points towards the impossibility of constructing a normative theory of ends rather than of formal abstract means[2]; it thus deprives the latter of any necessary content. Morality, in that sense, is excluded from social life as an impossibility[3].

Hayek's attack on the notion of social justice, then, reveals an essential indifference towards the actual social conditions of human life. What is more, judging by current moral standards, it seems that it is an attempt to theorize and even idealize injustice (or, for that matter, immorality) itself. It could, of course, be argued that Hayek dismisses current moral standards completely. Indeed, such a view could find some support in Hayek's rejection of a substantial part of contemporary beliefs and practices on the grounds of them being remnants of a past, "tribal" stage of development of human societies. Notwithstanding that point, the advocate of such a view would still have to face two difficulties which appear to be overwhelming. The first, which has already been encountered previously, is that Hayek's evolutionism simply does not allow for such evaluative judgments to take place. Thus, to the extent that Hayek criticizes various beliefs and practices in contemporary societies, he does so at the expense of consistency. This point becomes all the more problematic when issues concerning current morals are involved. For, Hayek's inconsistency in that case transcends the methodological level and enters that of his basic epistemological premises. It is precisely the view that it is this "impartial" (i.e. detached from any current social "patterns") standpoint which permits such evaluative judgements, that Hayek emphatically disavows in his argument against modern rationalism. The second difficulty relates to the political nature of his theory. In his effort to present a politically tenable ideology, Hayek does not hesitate to argue for the superiority of capitalism in terms of current moral standards - that is, in terms of those same

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[1] R. Nisbet persuasively demonstrates the Burkean origin of that argument (R. Nisbet 1986 p.58).

[2] G. Walker 1986 p.14.

[3] On that and on a very accurate remark on the essential differentiation (or even opposition) of Hayek's thought from Kant's, see Y. Quiniou 1984 pp.82-83. D. Meiklejohn is also of the opinion that to the extend that Hayek uses Kantian ethics to backup his theory he distorts Kant by emphasizing the formalistic aspects of his morals (D. Meiklejohn 1980 p.123).

standards that he dismisses as "tribal"[1]. The theorization and idealization of injustice emerges clearly in the substitution for actuality (capitalism) by the norm of actuality ("free enterprise society"). As Quiniou observes (Y. Quiniou 1989 p.84), in Hayek's social theory this substitution becomes a systematic process which has wide ramifications in the field of social relations. Thus, "social classes" become "groups" or "multitudes", "private property" becomes "pluralist property" and "not finding a job" replaces "unemployment". In that sense Hayek's insistence on presenting the relations of production in society as a social "game" is quite illuminating. But the "game" model is not neutral. It actually leads to a conception of social order as a self-contained and self-regulating order[2] while at the same time it promotes the idea of liberty and equality (as between "players") and obscures actually existing coercion and inequality[3]. However, it is that same conception of the social "game" that denotes Hayek's immorality. For, "games" are amoral as such. There is neither morality in or morality of the game. There are only rules of the game[4].

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[1] He does so in many parts of his work. For example, see F.A. Hayek in F.A. Hayek 1954 pp.3-29, where he is at pains to disprove the accusation that capitalism has historically been found incompatible with some moral values, not on the grounds of a different morality, but by saying that capitalism actually promoted rather than impeded these moral values. On that, see also G. Walker 1986 p.62. The same problem appears in other advocates of the "free" market morality. Thus, Milton and Rose Friedman (1980 pp.146-148) actually argue for the grater equality that the "free" market is bound to produce in a society. The argument is obviously incompatible with the rejection of the moral status of equality that constitutes one of the most fundamental aspects of their approach. It even becomes self-defeating in view of the fact that equality is actually considered as a lethal danger for any "free" market society.

[2] For a discussion of "methodological individualism", which is the basis of Hayek's social theory, in terms of games theories, from a libertarian perspective, see R. Nozick 1977.

[3] Which, of course, preexists before the "players" start their "game" and is made even sharper after each round of the "game" is completed.

[4] A similar concept of morality appears in the works of M. Polanyi. Polanyi, who is much less a political theorist than Hayek, does not hesitate to use the game model in order to reach such conclusions as that the sole legitimate incentive of a worker is to try to "gain promotion by pleasing his superior" (M. Polanyi 1951 p.195n.). The rest of the ethical considerations relating to one's job or social position are simply not of his concern (the former being of the concern of his "superiors", while the latter that of the spontaneous social order). On the eliticist implications of a morality such as Hayek's, see S. Brittan 1980 p.36.

6. Economic Functions of the State: The Problem of Coordination

Hayek next proceeds to the problem of the economic function of the state in relation to society. The use of the words "government" and "market" respectively shows his intention of limiting the study of the structure of capitalism as a mode of production to the form in which it appears after production has taken place. Although this is not a study of economics there is one general remark that should be made. When analyzing the political organization of society, Hayek presupposes, as we have seen, that some general laws exist beyond it and should rule its spontaneous development. Political organization under the falsely personalized limited notion of "government" should be concerned with the adaptation of these preexisting general laws to concrete conditions. When analyzing the economic order, then, he presupposes what is most important - the mode of production. This latter plays in this connection the role of the "universal rule" that exists beyond society. Economic organization is limited by the introduction of the term "market" as determinative for his analysis. The free market in the same way becomes an idea (method) of organizing the already given and unalterable mode of production. The spheres of circulation and consumption then, are proclaimed to be paramount economic spheres and what is more they exhaust the whole of the economic area[1]. The general point that arises from this correspondence is a constant attempt to regard all fundamental problems - the way that production is organized, the way relations between people are structured in society, etc. - as natural and to direct all "scientific" analysis towards the question of the method that should be used within the given frame.

The relation between economy and politics is of the utmost importance in the understanding of Hayek's theory. Hayek starts from the idea that economic structure and political organization are two separate things. "These two kinds of power [namely, "power over material things and power over the conduct of other men"] are not necessarily connected and can, to a large extent, be separated" (F.A. Hayek 1979

[1] Afanasyev 1983 pp.355-356.

p.80)[1]. This view provides him with the necessary presupposition to defend the major socio-economic foundation of contemporary capitalist monopolies. Since the power over material things - the control of the means of production - does not lead to the control of people too, large accumulations of capital in the hands of individuals cannot be blamed. On the contrary, it can be said that such accumulations - monopolies - are beneficial to the whole of society if they can produce commodities at cheap prices.

The argument to this effect consists of two separate parts. The first part refers to the relation between the mode of production and the mode of social organization and is totally false, while the second refers to the fact that large scale production can make a fuller use of resources. Starting from the second part we should say that as a fact it is undeniable. Historically speaking, this was the reason why large-scale industry took precedence over manufacture during the last century and this, up to a point, is the reason why monopoly accumulations of capital took precedence over separate large-scale industries. The tremendous development of technology during the last half of our century only speeded up a process that was already under way during the 19th century. But evaluating such a process without placing it in its concrete socio-economic frame is an incomplete approach. The main feature of the capitalist mode of production is the contradiction between the private ownership of the means of production and the socialized character of this production. This contradiction becomes sharper as long as the means of production continue to concentrate in the hands of smaller and smaller groups of people while, on the other hand, production itself augments, and consequently its socialized character augments too; and this contradiction renders critical the process of social development. This is the characteristic of monopoly dominated capitalism (Afanasyev 1983 pp.385-386). And this, as well, is the point of the attack on the part of its opponents: not the "large aggregations of material resources" as such, as Hayek maintains. Choosing to defend monopolies on the ground of an abstract formation, Hayek tries to present their opponents as enemies of development in general.

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[1] For a similar concept, see N. Barry 1987 where he argues that it is the "politicization" of social and economic life that bears the responsibility for the failure of the welfare state. But even Barry is skeptical about the implications that this sharp distinction leads to. "But nevertheless it may still be legitimate to ask whether Hayek can exclude entirely the concept of political rights from the rubric of liberty by a kind of verbal fiat?" (N. Barry 1979 p.58).

Hayek defends the first part of his argument by maintaining that in modern societies it cannot be said that monopolies exercise power over men apart from influencing the standards of the services required. As long as a monopoly stands ready to supply everyone who wants its products, even though it thereby makes a huge profit, not only would all its customers be better off, but they could also not be said to be dependent on its power. Thus, Hayek shifts the aim of social sciences to the study of subjective psychological phenomena[1]. Notice that in doing so he claims to have dismissed socialism and Marxism on "scientific" grounds. Despite his claim, however, Hayek completely ignores the differentiation made by Marxism between concrete and abstract labor. It is only through that differentiation[2] that Marxism establishes the two-fold nature of all phenomena in capitalist production: that is, the material content on the one hand and the socio-economic form on the other of all economic processes. Thus, Hayek does not find any sort of exploitation because he does not look for it in the sphere of production but in the sphere of exchange. Another implication of his exchange-oriented account is the equation of all the participants in the market in terms of their being equivalent units. This concept, usually presented as the application of individualism in economics, leads to the conclusion that the market is the place where equal units (for example corporate enterprises and individual workers) compete. However, "There is also a greater contrast today between the power of the individual and the small family group and that of the big organization." "The difference in power means that transactions in the market are often not between independent and roughly equal contracting parties. The individual household is not striking a free bargain with the corporate enterprise. There is often a strong possibility that private coercion will replace free market outcomes. The imbalance in power further strengthens the case for a third party to which households can turn." (N. Bosquanet 1983 p.106).

Hayek's concept of monopoly totally avoids the problem of social relations

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[1] On the matter of subjectivism in social sciences, see also C. Kukathas 1989 pp.57-58.

[2] The importance of this distinction cannot be overemphasized in Marxism. For Marx it is the key for the understanding of *all* facts (K. Marx, F. Engels 1975 p.180). The analysis of these categories cannot be undertaken here. The point made refers to Hayek's effort to dismiss Marxism without taking into account one of its most fundamental concepts.

within capitalism[1]. A monopoly cannot function by exercising power over material things only. It needs human labor too. If human labor is taken as the basis of the category of "material resources", then it follows that monopolies not only exercise power but practically dominate over the people who sell their labor power to them. In Hayek's own words: "Competition is, after all, always a process in which a small number makes it necessary for larger numbers to do what they do not like" (F.A. Hayek 1979 p.77). Moreover, "As Hayek has pointed out again and again, there is no such thing as a control over the production of wealth which is not also a control over the lives of men" (G.C. Roche III in F. Machlup 1977 pp.2-3). Considering that in contemporary capitalism monopolies are not an isolated phenomenon but on the contrary, their existence determines the whole mode of production, we can assume that all men selling their labor power are "owned" by the owners of the monopolies thus producing the phenomenon of "new feudalism"[2]. This is the direct way through which monopolies exercise power but it is not the only one. Through the advantages emerging from their vast capital, monopolies systematically prevent competition. It is not the interference of a neutral but theoretically misguided state in favor of some monopolies that prevents competition, but the very existence of monopolies, whether they use the state apparatus directly or not[3]. This, perhaps, is the crux of Hayek's inadequacy in terms of economic analysis. It seems that his theory simply cannot

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[1] This seems to be the opinion of many sympathetic critics as well. For example, N. Barry "Hayek, on many occasions, laments the apparent passing of the individualist market order but does not really examine adequately the value system needed to sustain it." (N. Barry 1979 p.143). In a different vein, "The contrast between a spontaneous order and the dead hand of state prescription is an unreal one. It completely misses out the possibility that private power can be a very serious barrier to experiment and to innovation" (N. Bosanquet 1983 p.99). Finally reference must be made to Hamowy's critique of the Hayekian notion of monopoly which has tended to become a "classic" in the libertarian camp. Hayek himself is quite frank in his intention not to allow monopolies to interfere in his theory. Thus the subject usually occupies a distinctively small section of each of his works while many times it is grouped together with "other minor problems" (F.A. Hayek 1960 p.264). In his effort to dispense with monopolies Hayek has even argued that they have nothing to do with capitalism anyway. In reality, he says, they are just "remnants or revivals of precapitalistic features" (F.A. Hayek in F.A. Hayek 1954 p.28).

[2] For a critique of Hayek's intentional omission of these aspects, see G.L. Arnold 1960 p.105. A classic Marxist analysis is to be found in V.I. Lenin 1964.

[3] Even bourgeois theorists understand that clearly; thus, "Undoubtedly, the emergence of the large-scale enterprise is part of the spontaneous evolution of the market order yet it would appear to be accompanied by a set of values which are not merely inimical to the market order but are agents of its destruction." (N. Barry 1979 p.142).

account for the nature and function of monopolies as the determinant factor of contemporary capitalism. The problem for Hayek then seems to be that the state by its nature can never become a mere instrument in the hands of monopolies. It will always reflect, albeit in a distorted way, the structure and relations of the whole of society. Therefore, it might obstruct certain monopolies, especially during a period in which their existence depended upon the intensification of the exploitation of their workers. Thus, "It seems clear that this [i.e. the achievement of a "free" market order] can be done only by depriving government of the power of providing such protection, for as long as it has such power it is vulnerable to pressure" (F.A. Hayek 1979 p.83). In that sense, Hayek's suggestion of a self-regulating economy within monopoly capitalism can only be interpreted as an attempt to place society under the most arbitrary control both of the state and of monopolies. As he himself puts it: "Size has thus become the most effective antidote to the power of size; what will control the power of large aggregations of capital are other large aggregations of capital (...)" (F.A. Hayek 1979 p.79). Although the concept itself is quite doubtful, since the history of the growth of capitalism has shown that capital tends to accumulate more and more, what is beyond any doubt is that in such a society nobody will be able to limit the aggressiveness of monopoly capitalism as a whole[1].

[1] On that, see also S. Clarke 1987 especially pp.419-426.

SECTION D: HAYEK'S ALTERNATIVE

1. The Functioning of Government According to Hayek

Hayek has never defended libertarians or "anarchocapitalists" in their demand for a stateless society. What he has proposed is a state which will function in a different way from the existing one. He thinks it essential that most of the social functions of the state should cease to exist, that they should be left in the hands of individuals. At the same time he suggests some important alterations in the state's economic function. Its political function, on the contrary, which is the central and dominant state function, should be enforced in order to reach a level of considerable independence from society. Thus he is not against the state; he is just against some of its functions, while, at the same time, he suggests the enforcement of some others. The state is regarded as a necessary "evil" which has to protect legal institutions - the most important among them being private property - by coercion[1]. Consequently, the question that arises is: is he for or against the actual form of the state - namely bourgeois democracy? It is true that he has declared his faith in democracy many times[2]; but can we accept this assurance when his ideas lead to a form of state quite different from the one we know as democratic?

We have already seen Hayek's opposition to majority rule and parliamentarianism. His further argument concerns the limitation of the social function of the state. It is presented in terms of the division of social activities into two main sectors, the private and the public. The latter has overgrown during the last century and should be limited. The public sector should include three fields of activities: the enforcement of the rules of just conduct, defence and the levying of taxes to finance its activities. Nevertheless, these aspects are not the only ones. The state should provide its citizens with some goods which cannot be provided within the

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[1] See also J. Gray 1986b p.81 for an account of the need to safeguard private property through the means of a coercive state.

[2] Though, not without some noticeable exceptions, as we have already seen.

function of the free market but are of vital importance for all. "To this category belong not only some obvious instances as the protection against violence, epidemics, or such natural forces as floods or avalanches, but also many of the amenities which make life in modern cities tolerable, most roads (...), the provision of standards of measure, and of many kinds of information ranging from land registers, maps and statistics to the certification of the quality of some goods or services offered in the market. In many instances the rendering of such services could bring no gain to those who do so, and they will therefore not be provided by the market. These are the collective or public goods." (F.A. Hayek 1979 p.44).

The introduction of "collective or public goods" in Hayek's theory, however, is quite problematic[1]. Hayek has long argued that we cannot assume the existence of any collective aims in social relations for a number of reasons, the most important among them being the inner inability of human mind to predict the outcomes of a spontaneous order. The dilemma, so far, has been: either individuals will accept the fact that they cannot predict the outcomes of their social life and thus will resign from any notion of social or collective planning, or they will have to infringe each other's freedom. It has even been suggested that this is not an "open" choice, since even if they adopt the latter alternative it still will not be possible to predict anything because the inability to comprehend and consequently to plan is an attribute of human mind and, therefore, not a matter of free choice. So, human beings are unable to plan their social lives by definition.

Another element in Hayek's theory, deriving from his methodological individualism, is the subjectivist account of human aims[2]. Thus, it has been argued, even if there were a possibility of planning, this would not be desirable because each individual member of society has his/her own particular aims which are not connected in any way either to any factual state of affairs, or to the particular aims of his/her fellow members. So, human beings develop their personal aims as self-contained units. Besides, it is precisely on this subjectivist account of human desires that the validity of the market as a discovery mechanism rests. If it were possible to

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[1] For a similar view, see P.W. Dyer and R. Harrison Hickman 1979 p.387.

[2] Also F.A. Hayek 1949 pp.77-91.

determine what is that people want, in the absence of a market, then why should we need markets in the first place?

From the above two presuppositions it becomes obvious that it is quite difficult to derive any "collective or public" goods. The reason lies not in the selfish account of human nature that Hayek implies, but in the subjectivist and agnostic philosophical premises that he introduces. Furthermore, the provision against violence and natural forces is obviously a kind of planning. The implications that arise in Hayek's theory after the introduction of a kind of "limited" planing are profound. Once planning is introduced, it seems that all weight should lie on the definition of what should be included in that area - which can now be described as everything that is included in the "public goods" concept. The "obvious instances" and "amenities" that Hayek refers to are certainly a suggestion[1]. But they remain just a suggestion as long as the lack of a general criterion according to which some state activities would be thought of as providing "public goods", while some others will not, is apparent. Thus, most welfare policies can be regarded as public goods in that sense. Education, for example, becomes a public good when it is treated as a wider social benefit and as an investment in training for employment[2]. Hayek needs to introduce a criterion in order to evaluate state activities. The fact that he does not do so only indicates his uneasiness when he discusses the problem of the state in his legal and social philosophy[3].

An argument could be raised against this critique. Hayek avers that the maintenance of an overall order is a public good in the sense that it provides everybody with more chances to achieve his/her unknown ends. That this concept lies

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[1] Public goods in that sense are defined in terms of non-excludability and non-rivalness. That is, once a public good is provided it is available for all and its use by a person or a number of persons does not reduce the amount available to others. A similar definition is proposed in M. Polanyi 1951 pp.140-143. The vagueness inherent in such "calculations" is it would seem unavoidable. Characteristically enough Polanyi uses robots carrying "gauges" which record degrees of satisfaction in his examples (M. Polanyi 1951 pp.167-168). What is more important however is that Polanyi ends up advocating a much more comprehensive content of the category of "public goods" and state activity than Hayek does, without apparently violating the formal preconditions of his methodology.

[2] T. Adorno, for example, argues that knowledge in contemporary society becomes to an increasing extent a force of production (in T. Adorno (et al.) 1976 p.16).

[3] See also P.W. Dyer and R. Harrison Hickman 1979 p.387.

behind some state activities has been shown in the case of the provision of a minimum of support for the most "unfortunate". It is true that Hayek does not include this particular activity in the examples of the "public goods" that he presents, but there is no reason why it should not be included in that category as well. It has been argued that the concept of the "maintenance of an overall order" suffers from a high degree of abstraction and that, in its essence, is a strictly conservative concept. Therefore, the provision of "public goods" can also be seen as an ambiguous attempt to "correct" the outcomes of the "Ideal Society", thus making it more appealing to the people. In any case, the contents of the category "public goods" remain unclear in the Hayekian approach. Whether it will be understood as an extension of the concept of the maintenance of order, or simply as a vital completion of Hayek's account of social organization, the category remains obscure as long as there is no recognizable criterion according to which state activities can be judged as conducive or non conducive to "public goods". In fact it seems that any such attempt is bound to remain arbitrary[1].

Notwithstanding the importance of the above point, probably the most important implication is that the introduction of state activities aiming at "public goods", as well as the characterization of those activities as vital for the "Great Society" demonstrates that the main political principle of Hayek - namely the self-regulating market order - that serves as the starting point of his attack against state interference, should not be taken at face value, at least as far as the social function of the state is concerned. Hayek indirectly admits the failure of the market to generate a viable society. He proposes a limitation of some social functions of the state simply because he believes that the given order will not persist if it keeps on providing "high" standards of welfare.

There are at least three points of interest in this respect. Firstly, the free market is said to be unable to regulate society. It needs supplementary aid. Secondly, this aid - namely state interference - should strictly remain in the non-profitable sphere that individuals are not willing to exploit. In other words, the public sector is to a large extent a negative concept. It includes everything that the private sector cannot

[1] For an account of the problems that neoliberalism faces on that matter, see the "friendly" critique of N. Barry 1987 pp.64-69.

or does not want to include. Thirdly, when we come to practical examples we can see that there cannot be (at least not as a reasonable outcome of Hayek's definition) a sufficient criterion according to which we will be able to distinguish "public goods"[1]. This negative definition can lead to a variable size of the public sector according to historical circumstances. These variations may lean either towards a concept of a minimum state or to a concept closer to the welfare state. The weakness of this method is expressed in Hayek's own words. "It is not to be denied, however, that in this connection a prima facie conflict arises between the basic principles of a libertarian order and what appears to be unquestioned necessities of governmental policy, and that we still lack adequate theoretical principles for a satisfactory solution of some of the problems which arise in this field" (F.A. Hayek 1979 p.63).

Although uncertain in terms of methodology, Hayek's model becomes quite clear when we take into account his supplementary explanations. Apart from arguing that the "public sector" should extend only to the field that no private interest is willing to enter he also maintains that state financing of such a sector should not mean that the state controls it as well. "(...) the fact that some services must be financed by compulsory levies by no means implies that such services should also be administered by government. Once the problem of finance is solved, it will often be the more effective method to leave the organization and management of such services to competitive enterprise and rely on appropriate methods of apportioning the funds raised by compulsion among the producers in accordance with some expressed preference of the users" (F.A. Hayek 1979 p.46).

In that sense, state interference becomes a necessary component of the spontaneous order on the economic level exactly as it has become necessary on the social and political one[2]. The obvious contradiction that arises between spontaneity and state interference does not seem to trouble Hayek at all. Nor does the fact that he has condemned the latter on moral grounds, before reintroducing it as a vital element of the "Great Society". Instead, it seems that Hayek implies a distinction between a particular degree of interference rather than between spontaneous and

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[1] See also P.W. Dyer and R. Harrison Hickman 1979 p.387.

[2] See also P.W. Dyer and R. Harrison Hickman 1979 p.389.

planned orders or between "free" and state controlled ones. Far from being the outcome of a thoroughly skeptical epistemology or a strict methodology, his whole argument can be reduced to merely quantitative comparisons. A certain amount of interference is both necessary and desirable while a different amount is condemnable. The libertarian criticism, that once we accept some state interference there is no way to stop it from taking over the whole of the market, might be a little partial but what becomes apparent is that once we smuggle in state interference there cannot be any impartial abstract ideal or purely theoretical criteria which will allow a decision as to whether a certain amount of it is "good" or "bad". The criterion is bound to be practical, i.e. connected to the actual social and political situation and therefore it should be evaluated in ordinary political terms. By "different amount" it should not be understood a net increase or decrease since what Hayek suggests is a partial increase in some state functions and a partial decrease in some others. Overall, it is a change of the relative weight of the various functions of state policy which however is moving on the same tracks as traditional bourgeois political thought. In that sense the neoliberal "revolutionary" approach to the problems of social and political philosophy becomes a mere disguise; in fact it is ordinary conservative ideas under a different appearance[1].

Hayek's suggestion also means that the main task of the "government" is to extend the private sector by creating favorable conditions for it where such do not exist. This is an important point in the Hayekian theory because it is a point of confrontation with libertarianism and because it illustrates the intentions of the writer as far as the functioning of the state is concerned. We have seen that this idea did not emerge as a logical result of the Hayekian theory but as a more or less necessary (in the pragmatic sense) function that cannot be abolished. But what appears to be

[1] The conservative approach is captured by N. Barry "Thus it is the case that the conservatives now require both a strong and a limited state. They have a Hegelian vision of a powerful sovereign state that stands above the conflict within egoistic market society and impartially delivers law and order." (N. Barry 1987 p.194). The fact that Barry regards this concept as exclusively conservative is of secondary importance. For example, Nisbet does not hesitate to couple together the claim for a strong central government (R. Nisbet 1986 p.41) and the statement that for the conservative, laisser-faire and decentralization are sovereign (R. Nisbet 1986 p.37). What is important then is that the strong-limited state exists. The neoliberals tend to stress the legal sovereignty of that state whereas the conservatives its substantial; but this is only a secondary difference. Also A. Gamble 1988.

contradictory in this theory is the fact that "government" has to create the necessary conditions for private capital; and that is quite a different thing from the initial self-generating free market order. Furthermore, it is undeniable that those individuals who will be the organizers and the managers of the services financed by the "government" will be in a favorable position in comparison with all other individuals who have to support their enterprises on their own. The argument that this field will be open to all individuals does not alter the fact that in the end only some will take these jobs and they will be in a favorable position because of the "government's" interference.

So, government is shown to be no-more "supra-social" and "impartial" than law. It is supra-social only if society can be accurately reduced to a mere sum of individuals and it is impartial because it is supposed not to discriminate any particular person. But what Hayek leaves out of his account of both law and government is the most important thing of all: towards the overall shape of the society, the overall order as Hayek puts it, government is not and cannot be impartial. The fact that Hayek arbitrarily assumes that if a law or a government action is conducive to the maintenance of order it automatically follows that it is a "good" government (or law) only reinforces this point. What Hayek takes as granted constitutes a crucial problem of all political theory and action.

For Hayek the main task of the state is to create the most favorable conditions possible for the capital. This could be achieved both by authoritarian suppression of any resistance and by direct positive interference with the market mechanism. The state then is not simply an "unavoidable malfunction" but an actual prerequisite of the "Great Society".

There is also a third sector of social activity introduced by Hayek, the "independent sector". This sector is supposed to include "cultural activities" as well as many important fields of social activity such as the "urgent problems of our cities". This sector would consist of churches, foundations and endowments, private associations, charities and welfare agencies. The first thing that becomes apparent here is the effort to remove a number of very important and dangerous problems from the objective responsibility of the state to the moral good-will of individuals. The immediate result is the creation of institutions that will survive and prosper as a result of the inability of "government" to meet basic social needs. Combining this idea with

the ones we have discussed previously we can reach the following conclusion. "Government" is supposed to be an independent machine for maintenance of the free market. Its task is to provide that market with all the necessary services that will maintain order and assure its reproduction. In doing so it should always try to enlarge the sphere where private capital can make profits. This enlargement can be achieved either by direct financial support or by an indirect transfer of its responsibilities to the independent sector. In both cases, "government" activity should be directed towards the enforcement of private capital exclusively.

Although Hayek apparently considers liberty as a negative concept, his political theory is not limited to the doctrine of the absence of "state interference". Thus, he does not hesitate to find refuge in drastic state interference when this seems more convenient for his "free" market order. This concept appears in relation to the rights of the individual as well. So far we have seen that the general direction of his argument was against "government" interference in some spheres that were supposed to be the exclusive territory of individual action. According to the original definition of freedom as absence of coercion it would seem quite reasonable that these spheres would become "free" from the moment of the retirement of the "government". The general concept of the function of the "governmental" power enforces the above notion - in a "free" society "government" should avoid giving specific commands to specific individuals; it should rather try to apply the general rules of just conduct as impersonally as possible. But it seems that the above suggestions cannot guarantee "freedom" after all. Hayek appears to maintain that "government" interference is necessary, in the form of protection and positive action, to achieve liberty. Individuals should be protected from the coercion of some social, non-governmental institutions.

His attitude towards the protection of privacy and secrecy in individual actions can be used as an example at this point. "The delimitation of some such fields [i.e. privacy and secrecy] in which the individual is protected against the inquisitiveness of his neighbors or even the representatives of the public at large, such as the press, seems to me an important requirement of full liberty" (F.A. Hayek 1979 p.63). In that particular case the epistemological premises of Hayek's are violated directly: the market should be highly praised because of its knowledge maximizing role which alone can compensate for our cognitive weaknesses. The press however should be

restricted regardless of the role it plays in that very process in the name of "full liberty". No inconsistency seems able to present a decisive obstacle to Hayek's defence of the "Great Society". Freedom of opinion has long been a basic principle of liberalism and so has freedom of the press. Actually the latter has long been regarded as a criterion according to which one can tell whether a society is democratic or not. By his suggestion for restricting the freedom of press, especially by using "governmental" coercion, Hayek contradicts his own theoretical tradition[1]. But he also proves that when he feels there is a need for it he does not hesitate to take refuge in positive state interference. Thus, even a committed advocate of capitalism feels obliged to admit that "the contents of Hayek's agenda of government do seem a little arbitrary and would not be accepted by all liberals" (N. Barry 1979 p.111).

2."Model Constitution": A Proposal

The section referring to the "model constitution" gives us a good opportunity to see Hayek's ideas in a more concrete and comprehensive way. The aim of such a constitution is to provide societies and "governments" with a framework within which the line of the separation of the power between lawmaking and "government" will be clearly drawn. Practically this can be achieved by the creation of an assembly - the legislature - which will consist of individuals chosen in a way, and for a period of time, different to those of the "government". The general task of this legislature will be the discovery of universal rules of just conduct. These rules, as we have already seen, are the concrete expression (although in a general and impersonal form) of superior values which exist above society. So this legislature will be limited by the general principles and the values that determine society. Apart from the legislature there will be a governmental assembly the task of which is to give effective responses to problems arising during the process of social functioning. This assembly will be limited drastically by the general rules of just conduct formulated by the legislature.

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[1] Hayek could have tried to make some kind of distinction, for example, between "intrusive" and "investigative" journalism. Although such distinctions are not always unproblematic, they can, at least, be taken as attempts not to infringe the overall liberty of the press.

Thus there are three distinct levels in the Hayekian constitution. The first, that of abstract ideas, is totally independent of society and identifies the ultimate values of the latter. According to Hayek this process of the battle of pure ideas is a matter which goes forward between charismatic individuals, philosophers etc.. The ideas emerging from this battle will lay down in the most general terms the aims, values and *modus vivendi* of society. The second level, that of the "demigod" legislature, is supposed to play the role of the mediator between total abstraction (first level) and concrete vulgar material conditions (third level). The individuals who compose this assembly are unfortunately human beings and therefore they are related to their society in various ways. So they must be purified of these relations in order to gain the desired impartiality and neutrality towards their own society. Hayek's scheme is to try to isolate them from everyday troubles so that they become independent from society. Consequently, impartiality and neutrality are attributes that exist as a result of the isolation of the individual from society. In order to obtain the desired moral quality the individual has to deny his social dimension. This idea seems to penetrate Hayek's political theory; his suggestions are attempts to resolve the permanent problems that are created by the "dual" existence of human beings: they are considered to be social beings to the extent that they live of necessity in a natural dependence on each other, and at the same time they are required to become bearers of supra-social abstract ideas. In this sense Hayek's account of politics is based on the principle that the further an individual distances himself from society the more "neutral" and "impartial" he becomes.

Our objection to this scheme lies in two points. Firstly, it is impossible to think of individuals outside society and therefore it is a distortion of reality to give any account of isolated neutral individuals. In a way, Hayek himself does not disagree with this. Although his impartial individuals are supposed to be neutral in respect of their various personal interests, they are not supposed to be neutral in respect to the dominant traditions of their society. On the contrary, they are supposed to support them and promote them in the best way they can. The fact that Hayek considers this order to be a superhuman and neutral framework and thus deduces the consequent neutrality of the individuals who serve it, is, of course, a major difference between the two approaches. This order, however, is not necessarily a spontaneous-

liberal one. But if social order is conceived as a concrete class-divided formation, it becomes obvious that his suggestions lead to an extremely static and in fact self-defeating scheme. Some attention should be drawn to the fact that even Hayek cannot think of his impartial individuals as completely isolated units.

Secondly, this scheme is bound to lead to elitism and authoritarianism[1]. As a hint of Hayek's elitism, it can be noticed that he seems to reserve the attributes of moral neutrality and impartiality for the members of the legislature. The introduction of an openly coercive "government" completes the picture. In Hayek's "Ideal Society" there is no need for everybody to acquire the ideal characteristics. It is enough that the members of the legislature (a sort of Platonic guardian class) have them[2]; the rest (that is, the compliance of the people with the rules lead down by the legislature) is the business of the "government" - a part of its legitimate job to put into practice the general rules of law[3]. The products of the mental labor of the members of legislature, i.e. the general rules of just conduct, will be the incarnation of ultimate values and will serve as a general frame for the function of "government".

On the third level, we find the "government" in the very limited role of the guard whose task is the application of the above rules in each concrete case. Hayek considers the state apparatus as a potential field of battle between opposite group interests. This concept is close to reality. The state is indeed a battlefield of opposite interests but it is more than that. In fact it is not a neutral ground; it reflects the interests of the opposite groups in different ways. It is favorable to some and unfavorable to others, but the very fact that it is obliged to reflect all interests makes it "vulnerable" to the demands of the less privileged "groups". This is where the problem arises for Hayek's "free" market society. In other words the question is one

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[1] In that sense, with regard to his "Model Constitution" D. Meiklejohn comments that "it is precisely to remove from popular influence discussion of the fundamental issues that Hayek proposes his legislative assembly" (1980 p.123).

[2] "(...) [Hayek] clearly hankers like a good *philosophe*, for a Legislator to implement his Utopia and force the Demos (...) to be free" (J. Dunn 1978 p.28).

[3] For a similar concept that is based on the compatibility of liberalism and authoritarianism, see J. Gray 1986b chapter 9.

of making the state impermeable to any pressure that might emerge from the people[1]. To this Hayek replies with the sharp distinction of the civil and the political and the delimitation of individual liberty to the field of the former. The political is superimposed on certain parts of the civil but this coercive action is thought to be irrelevant to the problem of individual liberty because it is considered as exogenous to the civil.

The conception of the state as a (potential) battlefield of interests, however, creates some questions right from the beginning. In Hayekian theory, actually or potentially opposed interest need not be considered as a necessary characteristic of society. On the other hand, there are no historical examples of homogenized societies and our society is no exception. So, opposing social interests occupy an unstable position in the structure; they are there as a fact but there is no attempt to explain them either historically or methodologically. The first step was to destroy all forms of organized expression of "group" interests in theory and in practice. The second step is to create a form of political power as distant and impervious as possible.

What becomes incomprehensible after this description of the political organization of the "Great Society" is Hayek's persistence in the idea that this "order" will not function unless the majority accepts certain abstract moral values. Notwithstanding Hayek's claim it seems that under such an elitist institutional framework the "Great Society" will survive regardless of particular personal opinions on abstract moral matters. So, it is one of the following two options: either Hayek relies on the acceptance of the suggested moral values as a *sine qua non* of the "Great Society", in which case the proposed strict institutions become superfluous, or he relies on the existence of these institutions precisely because he believes that there is not going to be any agreement on abstract moral values by the great majority. It is in the latter context that Hayek suggests the three level structure of power. The first level is impermeable by definition since we have already seen that the discovery and expression of abstract ideas is the task of the few, the philosophers and not of the

[1] For a more clear statement of the same principle and a striking similarity with Hayek's "new" proposals, R. Nisbet 1986 pp.37-38.

ordinary people[1]. The second level becomes forbidden ground as a consequence of the proposed structure. Since only "successful" individuals will participate and since elections will take place under extremely strict conditions, ordinary people are practically excluded. The third level, that of the governmental assembly and its executive organism, is still "vulnerable" in theory but its absolute control by the legislature renders this "vulnerability" a mere formality.

It is in this scheme that Hayek concludes that individual freedom is preserved if we can drastically limit the power of government. This, nevertheless, is a very dubious conclusion, as has already been argued. In the case of the "Model Constitution" for example, Hayek leaves his proposed legislature out of the state corpus by identifying the state with government. It is in that context, and only in that context, that Hayek suggests a delimitation of state activities. Only if one accepts the separation of the state from society and the consequent delimitation of the term "state" can one argue that the Hayekian theory introduces a delimited state. The apparently "secondary" paragraph in which Hayek argues that we should use the term "government" rather than the metaphysically charged term "state", now acquires its proper importance. Far from discussing two terms for the same thing as he seems to imply, it is now evident that Hayek suggests a new content for the term "state". But if one does not accept this smuggling, that is if one includes in state functions both the legislative and the executive acts as two supplementary aspects of state domination, then the image of the proposed theory changes dramatically. Instead of a delimited state theory it becomes a state centered theory whose main target is the drastic increase of the coercive and authoritarian aspects of the capitalist state[2].

A closer look at his suggestions on the organic composition of the legislature might perhaps help towards an understanding of the consequences of the proposed scheme. The first suggestion that Hayek proposes as a "cure" of the malfunctioning of democracy and as a conclusion of his historical and theoretical analysis, concerns the division of democratic powers. "Legislation in the true sense ought always to be

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[1] Which latter, according to Hayek, have neither the time nor the ability to think through abstract ideas (!).

[2] See also D. Meiklejohn 1980 p.123.

a commitment to act on stated principles rather than a decision how to act in a particular instance. It must, therefore, essentially aim at effects in the long run, and be directed towards a future the particular circumstances of which are not yet known; and the resulting laws must aim at helping unknown people at their equally unknown purposes. This task demands for its successful accomplishment persons not concerned with particular situations or committed to the support of particular interests, but men free to look at their tasks from the point of view of the long run desirability of the rules laid down for the community as a whole" (F.A. Hayek 1979 p.37). The legislature will thus consist of individuals "who have already proved themselves in the ordinary business of life" (F.A. Hayek 1979 p.113). The exclusion of all people who did not manage to prove themselves in the ordinary business of capitalism is characteristic of Hayek's elitist tendency[1]. Various supplementary safeguards of this elitist assembly are introduced. One of them is the abolition of universal suffrage because people can only be judged by their contemporaries, i.e. by people of the same age. So only these individuals who came to the 45th (that is the suggested age for somebody to become a member of legislative (F.A. Hayek 1979 p.113)) year of their lives should vote[2]. To make things worse and in order to complete the control of the candidates over their voters, Hayek suggests a further limitation, namely, that of indirect elections. "This might well make it advisable to employ an indirect method of election, with regionally appointed delegates electing the representative from their midst" (F.A. Hayek 1979 p.114).

But this is only the first step towards what Hayek calls a free political system. The second is to assure the members of the assembly a position that will permit them to exercise their "impartial" powers. Thus, an extremely long period of service - fifteen years - is introduced along with high salaries which are supposed to make people independent of the needs of everyday life. The long period of their service and especially their irrevocability by the people or by any other body underscores Hayek's inclination towards elitism and authoritarianism.

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[1] See also D. Meiklejohn 1980 p.122.

[2] That, of course, makes matters easier for the candidates and their sponsors. Individuals quite powerful by definition can control the votes of an extremely limited number of voters much easier. For example, see Hayek's suggestions in F.A. Hayek 1979 pp.117-119.

As a sample of the inconsistencies that permeate Hayek's theory, one can note that, when he was arguing for the advantages of democracy as a method of political organization, he included the revocability of the people's representatives amongst them. However, in the case of the legislature, Hayek urges the irrevocability of its members as a necessary guarantee of their neutrality. It might be argued that Hayek was referring to democracy as a method of government only. But this would imply that the "Ideal Society" should be based on a "democratic" government controlled by a non-democratic superior power, namely the legislature, an argument which looks less than persuasive. By creating a "legitimate" group of people who will have supreme power in their hands, Hayek abandons the final elements of liberal democracy, as far as the political organization of society is concerned[1]. The proposal of a high salary as a safeguard of the independence of these people, is surely not an adequate measure. There is no indication that people who earn a certain level of money are not willing to increase their incomes even more. Furthermore, a well paid position and the ensuring of a high pension has always been the best reward for buying one's services. What is beyond any doubt is that, in a system such as this, people who have already proved themselves in the business of life will be able to exercise an excessive control over society, either directly or indirectly by their representatives in the legislature[2].

Hayek's critique of existing bourgeois democracy starts from the true recognition that contemporary parliaments are a cover for governmental activities. But, instead of interpreting this widely acknowledged phenomenon as a result of the historical process of the development of bourgeois society, he thinks that it is the result of the action of misguided individuals; a matter of wrong application of correct ideas. And he ends up by rejecting the democratic element of representative institutions[3]. In order to understand more fully the extent of power that such a

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[1] See also Gray's flat statement that the political can never be democratic "because power cannot by its nature [sic!] be distributed equally" (J. Gray 1986b p.58).

[2] S. Brittan adopts a very similar position on that matter although he is prepared to grant the legislature more autonomy in respect to particular pressure groups (S. Brittan 1980 pp. 45-46).

[3] The reason why parliaments became halls of debate instead of centers of decision is that their members acquired an artificial independence from society, some very essential privileges and high expectations of not losing their jobs. All these elements are stressed to an extreme degree in Hayek's (continued...)

legislative assembly will possess we need to place the conception of it within the whole Hayekian structure of political power. In a "free" society there will be a constitution but it will have an even more abstract and formalistic role than contemporary ones: "while the Constitution allocates and restricts powers, it should not prescribe positively how these powers are to be used" (F.A. Hayek 1979 p.123). This prescription is, again, a task of the legislature. On the other hand, the governmental assembly and its "executive organs" would be bound by the decisions of legislature too. Combining the above remarks we end up with a superpowerful group of people who determine all political decisions directly and all political actions indirectly (through the "limited" government) and who at the same time are not controlled by the people. This becomes still more apparent owing to the "right" the legislature will have to grant governments "emergency" powers "which normally nobody should possess" (F.A. Hayek 1979 p.124) as well as the right to revoke powers when it is thought necessary[1]. Hayek, then, seems to abandon the abstract normative character of his "Model Constitution". In the end, it is the decisionist element of the authoritarian legislature that determines the order of the "Great Society"[2].

Hayek's "ideal" constitution is a sample of theoretical arbitrariness and political oppression[3]. Its implication is to safeguard the state from any pressure of the people and to render it a mere tool in the hands of the most powerful. In that sense, Hayek's proposals clearly testify to his intention not only of distinguishing between liberalism and democracy but also of eradicating the latter from the former. In short, it is the theoretical expression of the most aggressive part of contemporary capitalism.

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[3](...continued)
"ideal" constitution. Only when the members of any legislature or assembly feel the results of their own decisions on themselves, only when they do not consider their function as a profitable business and when they are expected to work to earn their living, only when all privileges that go along with the "job" are abolished and all these parliamentary assembly and legislature members are directly responsible to and revocable from the people can we expect to have a truly representative democracy.

[1] See also D. Meiklejohn 1980 pp.121-123.

[2] On this point, see F.R. Cristi 1984.

[3] For a similar charge, see also A. Belsey in R. Levitas 1986 p.187.

CONCLUSION PART III

In Hayek's theory there is ample evidence as to the importance of the state. Of course, the state as such is never explicitly treated as the key concept in politics. Rather it is subsumed under skeptical epistemological considerations, terminological "renovations" and eternal traditional laws. It is not a matter of coincidence, however, that Hayek's political theory became widely known as the result of the propositions he advanced in relation to the function of the state. Indeed, it seems quite doubtful that anybody outside a small professional academic circle was aware of or interested in the radical epistemological or methodological propositions that Hayek was at pains to promote in his political theory. And properly so, it might be said, since the part of his thought referring (directly or indirectly) to the problem of the state seems to incarnate all the power and insight of the "new" theory. It is here that Hayek warns contemporary societies on the matter of the irreversible road to socialism and self-destruction that they have taken. It is also here that he attacks all the misconceptions and fallacious beliefs - such as democracy and social justice - that have prevailed among socialist and crypto-socialist intellectuals and their fellow-travellers, the politicians. And, above all, it is here that he sketches the organization of the "Great Society" as a social and political formation. The study of this aspect of his thought would, then, seem to supply the best opportunity for an accurate evaluation of Hayek.

It may not come as a surprise, by now, to learn that the connection between this and the other major aspects of Hayek's theory, such as epistemology or even social philosophy, is, generously speaking, loose. Indeed, in each and all the major points of his political theory - be it the attempt to legitimize abstract rules as guiding principles of a "free" social order, or the role of democracy, or, more importantly, the nature and role of the state in respect to the spontaneous order of the "Great Society" - Hayek seems unable to avoid diverting from or even contradicting his supposedly guiding epistemological premises. This can be interpreted as a methodological weakness, and it certainly is one. However, such an interpretation, if delimited at this point, would fall short in that it would not be able to explain the influence that Hayek's theory exercises currently. His theory seems to acquire a "life" and importance of its own contrary to the scholarly reservations on the part of its critics.

If this point is relatively clear by now, it seems that the road towards an evaluation of Hayek's theory in terms of the political significance of its suggestions has opened. It is, then, in reference to its political outcomes that the totality of Hayek's thought must be evaluated.

The argument in the present part has attempted to show that Hayek's proposals are of a distinctively conservative kind. His "Great Society", it has been argued, is the idealized projection of contemporary capitalism on a theoretical level. Indeed the presentation of the "Great Society" by Hayek looks very much like an attempt to legitimize the needs of capitalist reproduction and make them more attractive, both for those who do not participate in holding means of production (since it presents all human progress as an achievement of capitalism while it holds that all social "misfortunes" are simply unavoidable and irrelevant to it) and for those who actually own the means of production (since it guarantees them a strong authoritarian central power which will in effect be at their service only[1]). The activist authoritarian dimension of Hayek's theory, rather than any attempt to demonstrate the necessarily limited nature of the human mind, is the predominant characteristic of his thinking. To this, one can add the circumstance of his cynical and aggressive way of addressing traditionally "sensitive" problems in politics, such as social justice. This combination of cynicism in morality and conservative authoritarianism in politics constitutes the basic novelty of the theory.

[1] See also D. Edgar in R. Levitas 1986 p.75.

CONCLUSION

Hayek's theory occupies a unique place in contemporary social thought. This uniqueness derives form two different features. The first concerns Hayek's endeavor to cover a very wide range of different theoretical topics. It would seem that in a period of specialization *par excellence*, Hayek has placed himself against the current. The second feature touches upon a more essential point. It is that his thought has always strived to combine different currents of theoretical discourse.

This feature is present in all the aspects examined previously. In matters of ontology, it assumes the form of a conflict between a mystified and ultimately idealist monism and a more conventional (but equally idealist) rational dualism. In epistemology, it appears as a constant tension between agnosticism (skepticism) and a mechanistic rationalist account of the cognitive process. In methodology, it is reflected in the ambiguous relation between, on the one hand, a thesis as to the basic unity of science and, on the other, a recognition of determinative differences between social and natural sciences. In political philosophy, it makes itself felt through the coexistence of naturalistic evolutionism and abstract normativism; and finally, in terms of applied politics, it emerges as a simultaneous appeal to order, authority and liberty. In this sense, Hayek's theory can be understood as a constant struggle to reconcile different theoretical propositions. It is then a theory of compromise and eclecticism.

One of the two main points of the above discussion has been to show that this compromise is unattainable on "purely" theoretical grounds. The tension between the conflicting starting points of Hayek's theory remains unresolved despite Hayek's endeavors, and is ultimately fatal for the logical validity of the theory itself. Thus, it has been argued that Hayek's thought results almost invariably in some sort of logical vicious circularity.

A recent work on these issues suggests that Hayek's main task was to reconcile a Humean social and political theory with a Kantian moral theory (C. Kukathas 1989 pp.1-19). The view taken in the present work suggests that a broader interpretation is both helpful and necessary. It is helpful, because the mere characterization of a contemporary thinker as Kantian or Humean seems to create more problems than it solves. For one thing, there is much disagreement about the meaning of the content of the labels "Kantian" and "Humean". The use of the label "Kantian", for example, can acquire quite different significances according to the ideological perspective as

well as the individual point of view of whomsoever employs it. For another, there seems to be a tendency among those who prefer the "labeling" of modern theorists in the above sense, towards an unhistorical oversimplification of such theories' characterizations. Such an approach commonly attributes an independent life to the ideas of past thinkers. Thus, ideas seem to survive somehow unchanged, and are reprojected in the theories of subsequent thinkers regardless of the social changes that occur in the meantime. It looks, though, as if this approach runs the constant danger of becoming formalistic, that is, of ignoring the actual interrelation between a certain set of ideas and the socioeconomic environment in which it appeared, as well as the historical function of the ideas concerned. Thus, although there is a partial overall similarity between the *form* of some ideas of the 18th century liberalism and those of Hayek, their historical and social significance is quite different. The former were referring to a primitive stage of "free competition" capitalism while the latter refer to the latest stage of monopoly capitalism where any pretence of "free competition" has long since ceased to exist.

It is necessary, because, as has been argued before, it is indeed doubtful if a theory with the breadth of Hayek's can be contained within the general propositions of Hume and Kant only. It is not only the influence of Berkeley's idealism that is overlooked as a result of such a delimitation. It is mainly the overwhelming importance of empiricism (in its versions of critical empiricism, pragmatism, logical positivism etc.) that is underestimated. There is, of course, always a possibility of establishing an indirect link between empiricism and Hayek's thought *via* the Kantian and Humean doctrines. However, the importance of the influence of empiricism in Hayek's thought is such that the connection must be made explicitly and analytically. To try to restrict Hayek's lengthy empirio-critical account of theoretical psychology to some version of abstract Kantian or Humean ideas,is, it would seem, to overlook the whole development of society and philosophy for more than a century.

This view does not question the need to establish a link between the thought of contemporary thinkers and that of previous generations. It merely tries to point out that, if this is to become the only or even the main criterion according to which contemporary thought is to be understood and evaluated, the result is likely to be scholasticism devoid of interest.

Thus, notwithstanding the above reservations, the argument that "(...) the philosophical assumptions which underpin [Hayek's] social theory are inconsistent with those underlying his attempt to justify liberal principles" (C. Kukathas 1989 p.17) has also been advanced in this work. But whereas Kukathas (and many scholars before him) condemn Hayek's theory as a failure, based on such grounds, the view taken in the present work is that this reason is insufficient. Hayek's failure can only be asserted in such terms "if we take seriously Hayek's claim" (C. Kukathas 1989 p.15), that is, if we accept that his enterprise depends on a successful combination of a particular account of social theory with a particular account of morality. This latter view tends to attribute a determinative role to the element of inner consistency in Hayek's theory. There is however ample evidence that Hayek himself does not attribute major importance to this aspect of his thought. Thus, it has been argued that "Hayek is not afraid of bold paradox. (...). Or more likely he just doesn' t care." (A. Belsey in R. Levitas 1986 p.177). Indeed such an interpretation has the merit of avoiding the unconvincing argument that the inconsistency of Hayek's theory depends either on his personal inability to combine different theses that are in principle reconcilable, or on his erroneous choice of *a priori* irreconcilable principles.

But if a characterization of Hayek as Kantian or Humean and a consequent critique of his theory in terms of consistency with these doctrines alone is not sufficient, how should his thought be evaluated? The proposed alternative is to approach the failure of Hayek's thought in terms of inner consistency on logical grounds, as the main dynamic of the theory itself. In order not to become an apology for irrationalism, this apparently paradoxical proposal presupposes a further point of reference in relation to which some notion of coherence can be established.

The second of the two main points of this work has been to try to demonstrate that this further point can be identified as a defence of monopoly capitalism, presented throughout Hayek's work as a defence of the "free" market social order. Hayek defends *de jure* a social order where free competition reigns supreme. His social evolutionism, however, necessarily leads him to the admition that what exists is good. As a result, what he defends *de facto* is not free competition but existing, monopoly domination. Thus, he ends up in arguing for a free market society while actually defending monopoly capitalist regimes. The instability of his qualified utilitarianism

lies between a deontology which supplies, in the name of "anyone selected at random", an alternative to existing social arrangements, and an evolutionism which suggests that (owing to a process of "natural" social selection) what we have at present - namely, monopolistic social arrangements - must be best. In every case where Hayek's theoretical premises clash with the need for an argument for the "free" market order (that is, the existing, monopoly dominated society) it is always the latter that emerges victorious. Thus, the argument maintains that it is the limits of the "free" market society that determine Hayek's philosophy rather than the other way around. In that sense, Hayek's theory does indeed want to expose all social institutions to the challenges of the "free" market (M.M. Wilhelm 1972) but this is not attempted regardless of the results this exposure will generate. It is not just any "free" competition that Hayek favors, as it is not any outcomes of his evolutionism that he supports; what is favored is solely such competition as will (in his view) produce results favorable to the "free" market order. Thus, for Hayek "all behavior is *for the sake of* the market order of capitalism" (A. Belsey in R. Levitas 1986 p.183). It is only after understanding that, in any clash or contradiction, there always exists an *a priori* criterion for the case of capitalism, that the merely descriptive level of criticism can be surpassed and the essence of Hayek's theory grasped.

According to this argument, "given the lack of logical coherence required by common-sense ideologies, contradictions may be a strength rather than a weakness" (R. Levitas in R. Levitas 1986 p.11) in Hayek's theory. How can this be achieved? Take the case of the "free" market order, as an existing and at the same time futuristic model of social organization. As an existing social order it is presented as the ultimate one possible within Hayek's evolutionism. Its mere existence guarantees its desirability. At the same time, this order is heavily criticized as a socialistically contaminated society, in the light of abstract moral imperatives which are supposed to prescribe an even more "free" social order. Now the logical paradox, as expressed through Hayek's methodological inconsistency[1], is obvious. However, the function of the argument is impressive: capitalism as an abstract general concept, in the form

[1] And, of course, the epistemological as well, since Hayek's agnosticism does not allow anything near prescribing future social conditions.

of the "free" market order, emerges as the best possible type of society through the first part of the argument; at the same time, some of the actual problems emerging in the current stage of capitalist reproduction (such as the economic and ideological failure of welfare policies) are deemed to be results of inadequate application of capitalism. The logical paradox involved in this procedure becomes the *political* dynamic of the theory. Its ideological power thus lies in its ability to transfer responsibility for the failures of its ideal - i.e. the capitalist socioeconomic formation - to the people that live according to specific social relations, in that way[1].

This method can easily be extended infinitely. Thus, in every historical moment the general abstract premises of capitalism can be presented as prescribing the ultimate socioeconomic formation while the concrete expressions of the crises of this system can be regarded as a result of the incomplete application of these premises. A theory based on such circular reasoning may be able to draw more strength the more the actual crisis of capitalism deepens[2].

Hayek's theory then can be viewed as a theory of crisis. It is a theory of crisis in that it was born out of the actual crisis of monopoly capitalism (that of the 1930s); it is also a theory of crisis in that its appeal found grounds in a period of a particular strengthening of that crisis (the 1970s); it is finally a theory of crisis in that its main task is apologistically to account for the crisis of monopoly capitalism. It can particularly be understood as a dynamic response to the political crisis of the state under capitalism and its legitimating ideology. Thus, the view that "Hayek's political thought is worthy of attention because he has offered a distinctive conception of a liberal social order" (C. Kukathas 1989 p.215), where that conception consists of a "revival of the idea of the liberal polity as a *modus vivendi* rather than an expression of a comprehensive philosophical doctrine" (C. Kukathas 1989 p.225), points towards the heart of the matter. It is not the attraction of new philosophical perspectives but an idealization of the existing social relations that characterizes Hayekian theory in the

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[1] S. Clarke 1987 p.423 makes the point in reference to monetarism.

[2] Viewed in that way Hayek's theory becomes the perfect example of non-scientific theory according to the Popperian methodology. It is precisely the attribute of potential falsification that Hayek's theory lacks completely, and it is that unfalsifiability that guarantees it its actual political strength.

first place. Its main task is to legitimize the political and ideological crisis of the state which emerged as a result of the economic crisis of monopoly capitalism. Thus, it is not an ideology aiming at reformed social relations but a reformed ideology of existing social relations.

Hayek's attitude towards all major problems of political theory testifies to the above. For example, if democracy sometimes requires changes in existing social relations, then it is the attitude towards democracy that must be changed rather than social relations themselves. When the feeling that capitalism cannot fulfill its promises of social "justice" is apparent amongst people, it is the ("tribal") desire for a better life that must be fought over rather than the capitalist relations of production that have proved unable to provide it.

The argument presented here, further maintains that what constitutes the strength and significance of Hayek's theory also points towards its essential weakness. For, by deriving his guiding principles from a crude pragmatic defence of monopoly capitalism, Hayek is, at the same time, revealing the actual limits of his theory. In his attempt to legitimize the ideological crisis of capitalism Hayek is obliged to abandon any pretence of presenting a universally humanistic political ideology. The necessary (that is, for its reproduction) choices of monopoly capitalism can be presented as "inevitable", "unpredictable" or even "natural"; they can be placed in the realm of the "beyond" - that is, beyond the reach of conscious political activity - but they cannot be presented as "good" or "just" for everybody in the abstract liberal sense. Thus, the conscious refutation of reason in practical activity undertakes the task of negating the validity of "goodness" and "justice", that is, of time honored abstract liberal morality. But, at the same time, it underlines the impossibility of constructing a plausible - even in its abstractness - notion of "goodness" and "justice" for everybody. Consequently, the ideological function of Hayek's theory becomes imperiled. It is precisely for that reason that the majority of liberals and libertarians criticize Hayek for his lack of a normative theory of rights. What they seem unable to understand, however, is that such a theory becomes impossible on logical grounds once a pragmatic apology of

monopoly capitalism has been undertaken[1].

Of course, Hayek's theory, insufficient as it may seem to many, is after all an attempt to legitimize an actual complex of social relations. It is not surprising then, to find Hayek arguing that *in the long run* the "Great Society" is the best choice *available*. His arguments have already been criticized at length. What however is of interest here and indeed what singles out Hayek's apology for capitalism from previous attempts, is the conclusion reached if his arguments are taken as valid. The "Great Society" is not presented as good but as the best available. It is not that Hayek does not propose an ideal, then. It is that his ideal is no longer presented as an ultimate but only as a relatively better society. It seems that the defender of contemporary capitalism feels that at any level of abstraction, no matter how utopic, his proposals would never stand a chance of becoming the ultimate goals of everybody; at best they can be treated as the best available - "as if" they were ideals. Moreover, the already weakened position of these "as if" ideals becomes even more doubtful since their relative superiority can only be revealed at an indeterminate moment in the obscure future. Hayek's claim is that we must obey the demands of capitalism now because this *may* be proved the best choice available sometime in the distant and unknown future. His seemingly realistic claims, however, remain counterfactual wagers. This compromised account of the "Great Society" is a necessary result of Hayek's apology for capitalism. In other words, it may no longer be argued that what is good for capitalism now is also good for society as a whole.

It has been argued that the importance of Hayek's theory rests in that it has demonstrated that "an understanding of the nature of social process may offer a surer guide by telling us what kinds of rights and liberties cannot be adopted if the liberal order is to survive." (C. Kukathas 1989 p.228). This point seems to capture the

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[1] Whether a theorist will consider himself bound by logic is, of course, an altogether different matter. Nozick, for example keeps a logical appearance in his arguments throughout *Anarchy, State and Utopia*. This superficial logic however depends on whether one will accept his axiomatic abstract presupposition of a state of nature as the basis of social life. The same applies to a certain extent to Rawls' Original Position as the basic abstraction of his *Theory of Justice* (for an interesting critique of Rawls' Original Position in terms of formal rationality, see J. Charvet 1981 pp.109-115; for further criticism see B. Barry 1973 ch.9, and R.M. Hare in N. Daniels 1975). The fact that Hayek consciously refuses to take such arbitrary steps at the beginning of his theory may be attributed to the positivist influences of his thought.

essence of the argument presented above. The crux of Hayek's theory is indeed that there is a whole range of "rights" or practices that cannot (or can no longer) be adopted if the "Great Society" is to survive. Which are these lethal (for the "Great Society") rights and practices?

Firstly, what the "Great Society" is incompatible with is conscious rational social activity. The "free" market order cannot maintain itself unless a certain part of society[1] willingly denies the possibility of acting in accordance with conscious rational decisions. This denial does not apply equally to all spheres of human activity. Thus, in the market rational planning is still necessary and desirable as long as it does not transcend the limits of the market order. It is only political activity - that is, conscious social activity that aims at altering social relations - that must be considered as standing beyond the limits of reason if the "Great Society" is to survive.

Secondly, freedom - even in the liberal sense of individual freedom - is also perilous for the "Great Society". It is only freedom of, and in, the market that is necessary and desirable according to Hayek's blueprint. Any other freedom (including political freedom) may become incompatible with the "Ideal" order. Furthermore, freedom no longer entails rights or political liberties but only the obligation to obey the rules of the market. In Hayek's theory, "what is at issue is not civil liberties but setting the capitalist free." (A. Belsey in R. Levitas 1986 p.191). The freedom of the capitalist becomes the bond that holds the "Great Society" together, for it further necessitates the obligation of everybody to obey the rules of capitalism; and these rules are no longer compatible even with some of the traditional formal civil and political liberal liberties.

Thirdly, the "Great Society" is incompatible with the welfare concept of state. Thus, the liberal concept of the state looses some of its ambiguity. It is, of course, still presented as a neutral supra-social mechanism (as administration and government). Hayek's theory is at pains not only to stress that some functions of that mechanism are now harmful to the "Great Society" but also that, in many cases, it must actively intervene to secure and promote capitalist reproduction. Thus, the state's neutrality

[1] Whether this should be the vast majority, or simply people at the right places, has already been discussed.

becomes questionable at the same time as does its supra-social character. Its existence is justified to the extent that it promotes the capitalist social order. Moreover, and because of the nature of its role, the state in contemporary societies must be strong and authoritarian enough to be able to carry out its mission. A state open to pressures from sections of the society, the aims of which might not be identical to those of the "free" market, is not only insufficient but also dangerous. Thus, the subordination of the state to the needs of capitalist reproduction, which is the central *desideratum* not only in Hayek's theory but in the whole of the "New Right" (S. Clarke 1987 pp.419-424), becomes a *sine qua non* for contemporary capitalism.

Fourthly, it seems that if the "Great Society" is to survive, democracy must be crippled substantially. It is not only the concept of majority rule (a concept which has already troubled generations of liberals) that Hayek disavows. It is the politicization of the members of civil society that he most fears. What seems to be incompatible with the smooth operation of capitalism is the possibility of legal political activity aiming at the fulfillment of particular social demands. Hayek's opposition to democracy - even in its present form - is a further testimony to his belief that the "Great Society" will not in fact be a society desired by everybody. It is precisely the political activity of those who will not be satisfied with the outcomes of the "free" market that Hayek tries to suppress through his attack on most of the democratic institutions of contemporary Western societies. Democracy, of course, has long since ceased to be considered a synonym for liberalism or as the only desirable form of the state in capitalism. But while the view that a democratic state was not a necessary prerequisite of a liberal society was widely held for some time, Hayek's innovation on this matter is that he explicitly *opposed* democracy to capitalism. Thus, in his theory the argument seems to be that the survival of the "Great Society" actually requires the abandonment of democracy.

Fifthly, one of the severest dangers for the "Great Society" comes from the belief that its members are somehow equal. Egalitarianism - even in the sense of abstract "human" or "natural" rights - has left the liberal ideological armory long ago especially in view of the danger that it presented for liberal societies after the strengthening of socialism. Notwithstanding these developments, Hayek's thought has the merit of presenting *anti-egalitarianism* as a component part of any theoretical

attempt to legitimize capitalism. In that sense, social inequality is no longer a necessary evil; on the contrary it becomes praiseworthy, an element in the absence of which a society is doomed to moral and material decay. In his attempt to legitimize the existing social relations, Hayek shows, convincingly enough, that capitalism is actually *based* on social inequality.

Finally, any activity aiming at "social justice" must be eliminated if the "Great Society" is not to perish. Hayek's attack on the notion of "social justice" has been the most notable element of his social theory. In the "Great Society" Hayek avers there is no place for social justice. Thus, the bourgeois ideal of controlling social struggle and maintaining social order through the "redistribution" of wealth becomes one of the major foes of the "free" society. The way Hayek treats the subject is once more revealing. For one thing, his arguments show that there is little connection between the abstract bourgeois concept of "justice" (taken as a moral attribute) and the system of redistribution under the welfare state. The bold proposition that the only reason for providing a certain standard of living, far from having anything to do with abstract humanitarianism and moral considerations, is the prevention of major social unrest, reveals the essence of the existing mechanism of social welfare. At the same time, it testifies to the fact that, in periods of a crisis of reproduction of the capital, one of the primary aims of the state should be to try to diminish the existing standards of "welfare" to the point of near elimination[1].

Hayek's theory, it has been argued, acquires its importance only when viewed as an unconditional apologia for the crisis of modern capitalism. In this sense, it is predominantly a political theory, a component part of the bourgeois ideology. It is not, of course, the only component part. Differences exist among bourgeois theorists and some of these are of profound importance. Hayek's thought however may be considered as particularly illuminating for the student of contemporary political bourgeois thought in that it combines many elements of fundamental importance from the trends of thought traditionally called, in the English-speaking world, liberal and conservative. Indeed as critics were quick to point out[2] Hayek seems to bring

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[1] On this, see also A. Gamble & P. Walton 1976 especially chapter 6.

[2] For example, A. Belsey in R. Levitas 1986 p.189.

together conservatism and liberalism. In doing so Hayek is only expressing an actual process in theoretical terms. For, the characteristic of what has become the dominant view in the bourgeois thinking of the past 15 years is that despite any theoretical differences *in practice* there exists a widespread agreement on all the fundamental issues referring to the basis of the capitalist society. It is this process, captured by Hayek's theory with extraordinary accuracy and clarity, that the wider concept of conservatism proposed in this work[1], tries to accommodate. In this wider perspective Hayek's theory emerges as conservative *par excellence*. It is also a reactionary theory in the literal meaning of the word. Hayek himself sees the proposals of his theory as the necessary reaction to a process of socialist contamination of the "free" market society. His proposals aim at reversing this process and driving society (back?) to a golden age of capitalism. Moreover, it is in many respects politically reactionary in the sense that it proposes a series of drastic active measures in order to subordinate social relations to the needs of capitalist reproduction.

If the significance of Hayek's theory is that it has pushed contemporary liberal theory in a promising direction (C. Kukathas 1989 p.228) then its merit is that it has shown the limits of any such trend of thought and, for that matter, of any apology for the crisis of capitalist reproduction. The destruction of some of the most deeply founded liberal myths by their demystification and at times vulgarization, may have marked the end of yet another generation of bourgeois ideals. Their replacement by proposals such as those of Hayek is one alternative. Given the ambiguities inherent in Hayek's theory, however, it would be nihilistic to assume that the Hayekian alternative is the only one.

[1] For a definition of this concept, see in particular the relevant discussion in the "Introduction".

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